IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.2392 OF 2003

Satya Prakash Aggarwal
of Mumbai, Indian Inhabitant
residing at 62, Khushnuma Apartments,
M.L.Dhanukar Marg, Mumbai 400 026. .. Petitioner

V/s

1. National Stock Exchange of India
   a Company incorporated under the
   Companies Act, 1956 having its
   registered office at Exchange Plaza,
   Bandra Kurla Complex, Bandra (E),
   Bombay 400 051.

2. The Securities and Exchange Board of
   India, having its registered office
   at Mittal Court, 'B' Wing, 1st Floor,
   224, Nariman Point, Mumbai 400 021.

3. Mr.Bhavesh Dhirajlal Sethia
   Stock Broking Company Pvt.Ltd. a
   Company incorporated under the
   Companies Act, 1956 having its
   registered office at Kalyangi Margi
   & Co. East & West Building,
   55 Bombay Samachar Marg, Fort,
   Mumbai 400 023.

4. Y.H.Malegam, of Bombay, Indian
   Inhabitant, C/o.The National Stock
   Exchange of India, Exchange Plaza,
   Bandra Kurla Complex, Bandra (East)
   Bombay 400 051.

5. S.Venkiteswaran, of Bombay,
   Indian Inhabitant, C/o.The
   National Stock Exchange of India,
   Exchange Plaza, Bandra-Kurla Complex,
   Bandra (E), Bombay 400 051.

6. R.H.Patil, of Bombay,
   Indian Inhabitant, C/o.The National
   Stock Exchange of India, Exchange
   Plaza, Bandra-Kurla Complex,
   Bandra (E), Bombay 400 051.

7. Ravi Narain
   of Bombay, Indian Inhabitant,
   C/o.The National Stock Exchange
   of India, Exchange Plaza,

Bandra-Kurla Complex, Bandra (E),
Bombay 400 051.
8.J.Ravichandran, of Bombay,
Indian Inhabitant, C/o.The National
Stock Exchange of India, Exchange
Plaza, Bandra-Kurla Complex,
Bandra (E), Bombay 400 051. .. Respondents

WITH

WRIT PETITION NO.2735 OF 2004

Sandeep Aggarwal
presently residing at Villa No.9,
Al Manaria, UMM Sequim, Dubai, UAE
represented herein by his duly
constituted attorney Mr.Satya Prakash
Aggarwal by Power of Attorney
dated 23.04.1986 .. Petitioner

V/s

1.National Stock Exchange of India
a Company incorporated under the
Companies Act, 1956 having its
registered office at Exchange Plaza,
Bandra Kurla Complex, Bandra (E),
Bombay 400 051.

2.Y.H.Malegam, of Bombay, Indian
Inhabitant, C/o.The National Stock
Exchange of India, Exchange Plaza,
Bandra Kurla Complex, Bandra (East)
Bombay 400 051.

3.S.Venkiteswaran, of Bombay,
Indian Inhabitant, C/o.The
National Stock Exchange of India,
Exchange Plaza, Bandra-Kurla Complex,
Bandra (E), Bombay 400 051.

4.R.H.Patil, of Bombay,
Indian Inhabitant, C/o.The National
Stock Exchange of India, Exchange
Plaza, Bandra-Kurla Complex,
Bandra (E), Bombay 400 051.

5.Ravi Narain
of Bombay, Indian Inhabitant,
C/o.The National Stock Exchange
of India, Exchange Plaza,
Bandra-Kurla Complex, Bandra (E),
Bombay 400 051.

6.J.Ravichandran, of Bombay,

Indian Inhabitant, C/o.The National Stock Exchange of India, Exchange Plaza, Bandra-Kurla Complex, Bandra (E), Bombay 400 051.

7. The Securities and Exchange Board of India, having its registered office at Mittal Court, 'B' Wing, 1st Floor, 224, Nariman Point, Mumbai 400 021.

8. Mr.Bhavesh Dhirajlal Sethia Stock Broking Company Pvt.Ltd. a Company incorporated under the Companies Act, 1956 having its registered office at Kalyangi Margi & Co. East & West Building, 55 Bombay Samachar Marg, Fort, Mumbai 400 023.

WRIT PETITION NO.2764 OF 2004

Priya Doctor of Bombay, Indian Inhabitant, residing at 2, C Windcliffe, 50 D Peddar Road, Bombay 400 026. .. Petitioner

V/s

1. National Stock Exchange of India a Company incorporated under the Companies Act, 1956 having its registered office at Exchange Plaza, Bandra-Kurla Complex, Bandra (E), Bombay 400 051.

2. Y.H.Malegam, of Bombay, Indian Inhabitant, C/o.The National Stock Exchange of India, Exchange Plaza, Bandra-Kurla Complex, Bandra (East) Bombay 400 051.

3. S.Venkiteswaran, of Bombay, Indian Inhabitant, C/o.The National Stock Exchange of India, Exchange Plaza, Bandra-Kurla Complex, Bandra (E), Bombay 400 051.

4. R.H.Patil, of Bombay, Indian Inhabitant, C/o.The National Stock Exchange of India, Exchange Plaza, Bandra-Kurla Complex, Bandra (E), Bombay 400 051.

5. Ravi Narain of Bombay, Indian Inhabitant,

C/o.The National Stock Exchange
of India, Exchange Plaza,
Bandra-Kurla Complex, Bandra (E),
Bombay 400 051.

6. J.Ravichandran, of Bombay,
Indian Inhabitant, C/o.The National
Stock Exchange of India, Exchange
Plaza, Bandra-Kurla Complex,
Bandra (E), Bombay 400 051.

7. The Securities and Exchange Board of
India, having its registered office
at Mittal Court, 'B' Wing, 1st Floor,
224, Nariman Point, Mumbai 400 021.

8. Mr.Bhavesh Dhirajlal Sethia
Stock Broking Company Pvt.Ltd. a
Company incorporated under the
Companies Act, 1956 having its
registered office at Kalyangi Margi
& Co. East & West Building,
55 Bombay Samachar Marg, Fort,
Mumbai 400 023. .. Respondents

WRIT PETITION NO. 395 OF 2004

Lachhmandas L.Narang,
An Indian Inhabitant and Senior Citizen
residing at 301, Coste Belle, 687,
Perry Cross Road, Bandra,
Mumbai 400 050. .. Petitioner

V/s

1. National Stock Exchange of India Ltd.
A Company incorporated under the
provisions of the Companies Act,
1956 having its registered office at
"Exchange Plaza", Plot No.5,
5th Floor, Bandra-Kurla Complex,
Bandra (E), Mumbai 400 051.

2. National Securities Clearing
Corporation Ltd., A Company incorporated
under the provisions of the Companies
Act, 1956 as 100% subsidiary company
of National Stock Exchange of India
Ltd. having its registered office at
"Exchange Plaza", Plot No.5,
5th Floor, Bandra-Kurla Complex,
Bandra (E), Mumbai 400 051.

3. National Stock Exchange Investor Protection Fund Trust, A Trust created under the Public Trust Act by NSE having office at "Exchange Plaza", Plot No.5, 5th Floor, Bandra-Kurla Complex, Bandra (E), Mumbai 400 051.

4. Defaulter Committee- A/c.Bhavesh Dhirajlal Stock Broking Co.Ltd. A Committee constituted by NSE having office at "Exchange Plaza" Plot No.5, 5th Floor, Bandra-Kurla Complex, Bandra (E), Mumbai 400 051.

5. Securities & Exchange Board of India, A Statutory body constituted under the Securities and Exchange Board of India Act, 1992 having its office at Mittal Court, 1st Floor, C Wing, Nariman Point, Mumbai 400 021.

6. Bhavesh Dhirajlal Stock Broking Co. Ltd., A Share and Stock Broker, Trading Member of National Stock Exchange of India Ltd., having office at East & West Building, 55, Bombay Samachar Marg, Mumbai 400 021. .. Respondents

WRIT PETITION NO.1959 OF 2004

M/s.Amal Association,
A partnership firm having office at 77,
Udyog Bhavan, Sonawala Road,
Goregaon (E), Mumbai 400 063. .. Petitioner

V/s

1. National Stock Exchange of India Ltd. A Company incorporated under the provisions of the Companies Act, 1956 having its registered office at "Exchange Plaza", Plot No.5, 5th Floor, Bandra-Kurla Complex, Bandra (E), Mumbai 400 051.

2. National Securities Clearing Corporation Ltd., A Company incorporated under the provisions of the Companies Act, 1956 as 100% subsidiary company of National Stock Exchange of India Ltd. having its registered office at "Exchange Plaza", Plot No.5,

5th Floor, Bandra-Kurla Complex,
Bandra (E), Mumbai 400 051.

3. National Stock Exchange Investor Protection Fund Trust, A Trust created under the Public Trust Act by NSE having office at "Exchange Plaza", Plot No.5, 5th Floor, Bandra-Kurla Complex, Bandra (E), Mumbai 400 051.

4. Defaulter Committee- A/c.Bhavesh Dhirajlal Stock Broking Co.Ltd. A Committee constituted by NSE having office at "Exchange Plaza" Plot No.5, 5th Floor, Bandra-Kurla Complex, Bandra (E), Mumbai 400 051.

5. Securities & Exchange Board of India, A Statutory body constituted under the Securities and Exchange Board of India Act, 1992 having its office at Mittal Court, 1st Floor, C Wing, Nariman Point, Mumbai 400 021.

6. Bhavesh Dhirajlal Stock Broking Co. Ltd., A Share and Stock Broker, Trading Member of National Stock Exchange of India Ltd., having office at East & West Building, 55, Bombay Samachar Marg, Mumbai 400 021. .. Respondents

WRIT PETITION NO.1961 OF 2004

Heena Daswani,
An Indian Inhabitant residing at 93,
Satnam Apartment, 93, G.D.Somani Marg,
Cuffe Parade, Mumbai 400 005. .. Petitioner

V/s

1. National Stock Exchange of India Ltd. A Company incorporated under the provisions of the Companies Act, 1956 having its registered office at "Exchange Plaza", Plot No.5, 5th Floor, Bandra-Kurla Complex, Bandra (E), Mumbai 400 051.

2. National Securities Clearing Corporation Ltd., A Company incorporated under the provisions of the Companies Act, 1956 as 100% subsidiary company of National Stock Exchange of India

Ltd. having its registered office at
"Exchange Plaza", Plot No.5,
5th Floor, Bandra-Kurla Complex,
Bandra (E), Mumbai 400 051.

3. National Stock Exchange Investor
Protection Fund Trust, A Trust created
under the Public Trust Act by NSE having
office at "Exchange Plaza", Plot No.5,
5th Floor, Bandra-Kurla Complex,
Bandra (E), Mumbai 400 051.

4. Defaulter Committee- A/c.Bhavesh
Dhirajlal Stock Broking Co.Ltd.
A Committee constituted by NSE having
office at "Exchange Plaza" Plot No.5,
5th Floor, Bandra-Kurla Complex,
Bandra (E), Mumbai 400 051.

5. Securities & Exchange Board of India,
A Statutory body constituted under the
Securities and Exchange Board of India
Act, 1992 having its office at Mittal
Court, 1st Floor, C Wing, Nariman Point,
Mumbai 400 021.

6. Bhavesh Dhirajlal Stock Broking Co.
Ltd., A Share and Stock Broker,
Trading Member of National Stock
Exchange of India Ltd., having office
at East & West Building,
55, Bombay Samachar Marg,
Mumbai 400 021. .. Respondents

WRIT PETITION NO.2022 OF 2004

M/s.Rukhana Enterprises
A partnership firm duly registered having
office at 203, Golden Bungalow, 2nd Floor,
Juhu Road, Santacruz (W), Mumbai 400 054... Petitioner

V/s

1. National Stock Exchange of India Ltd.
A Company incorporated under the
provisions of the Companies Act,
1956 having its registered office at
"Exchange Plaza", Plot No.5,
5th Floor, Bandra-Kurla Complex,
Bandra (E), Mumbai 400 051.

2. National Securities Clearing
Corporation Ltd., A Company incorporated
under the provisions of the Companies

Act, 1956 as 100% subsidiary company
of National Stock Exchange of India
Ltd. having its registered office at
"Exchange Plaza", Plot No.5,
5th Floor, Bandra-Kurla Complex,
Bandra (E), Mumbai 400 051.

3. National Stock Exchange Investor
Protection Fund Trust, A Trust created
under the Public Trust Act by NSE having
office at "Exchange Plaza", Plot No.5,
5th Floor, Bandra-Kurla Complex,
Bandra (E), Mumbai 400 051.

4. Defaulter Committee- A/c.Bhavesh
Dhirajlal Stock Broking Co.Ltd.
A Committee constituted by NSE having
office at "Exchange Plaza" Plot No.5,
5th Floor, Bandra-Kurla Complex,
Bandra (E), Mumbai 400 051.

5. Securities & Exchange Board of India,
A Statutory body constituted under the
Securities and Exchange Board of India
Act, 1992 having its office at Mittal
Court, 1st Floor, C Wing, Nariman Point,
Mumbai 400 021.

6. Bhavesh Dhirajlal Stock Broking Co.
Ltd., A Share and Stock Broker,
Trading Member of National Stock
Exchange of India Ltd., having office
at East & West Building,
55, Bombay Samachar Marg,
Mumbai 400 021. .. Respondents

WRIT PETITION NO.2047 OF 2004

Rakesh Damani
An Indian Inhabitant, having office
at 125, T.V.Industrial Estate,
P.B.Road, Worli, Mumbai 400 025. .. Petitioner

V/s

1. National Stock Exchange of India Ltd.
A Company incorporated under the
provisions of the Companies Act,
1956 having its registered office at
"Exchange Plaza", Plot No.5,
5th Floor, Bandra-Kurla Complex,
Bandra (E), Mumbai 400 051.

2. National Securities Clearing

Corporation Ltd., A Company incorporated under the provisions of the Companies Act, 1956 as 100% subsidiary company of National Stock Exchange of India Ltd. having its registered office at "Exchange Plaza", Plot No.5, 5th Floor, Bandra-Kurla Complex, Bandra (E), Mumbai 400 051.

3. National Stock Exchange Investor Protection Fund Trust, A Trust created under the Public Trust Act by NSE having office at "Exchange Plaza", Plot No.5, 5th Floor, Bandra-Kurla Complex, Bandra (E), Mumbai 400 051.

4. Defaulter Committee- A/c.Bhavesh Dhirajlal Stock Broking Co.Ltd. A Committee constituted by NSE having office at "Exchange Plaza" Plot No.5, 5th Floor, Bandra-Kurla Complex, Bandra (E), Mumbai 400 051.

5. Securities & Exchange Board of India, A Statutory body constituted under the Securities and Exchange Board of India Act, 1992 having its office at Mittal Court, 1st Floor, C Wing, Nariman Point, Mumbai 400 021.

6. Bhavesh Dhirajlal Stock Broking Co. Ltd., A Share and Stock Broker, Trading Member of National Stock Exchange of India Ltd., having office at East & West Building, 55, Bombay Samachar Marg, Mumbai 400 021. .. Respondents

WITH

WRIT PETITION NO.2048 OF 2004

Sharda J.Rukhana
An Indian Inhabitant, having office at 203, Golden Bungalow, Juhu Road, Santacruz West, Mumbai 400 054. .. Petitioner

V/s

1. National Stock Exchange of India Ltd. A Company incorporated under the provisions of the Companies Act, 1956 having its registered office at "Exchange Plaza", Plot No.5, 5th Floor, Bandra-Kurla Complex,

Bandra (E), Mumbai 400 051.

2. National Securities Clearing Corporation Ltd., A Company incorporated under the provisions of the Companies Act, 1956 as 100% subsidiary company of National Stock Exchange of India Ltd. having its registered office at "Exchange Plaza", Plot No.5, 5th Floor, Bandra-Kurla Complex, Bandra (E), Mumbai 400 051.

3. National Stock Exchange Investor Protection Fund Trust, A Trust created under the Public Trust Act by NSE having office at "Exchange Plaza", Plot No.5, 5th Floor, Bandra-Kurla Complex, Bandra (E), Mumbai 400 051.

4. Defaulter Committee- A/c.Bhavesh Dhirajlal Stock Broking Co.Ltd. A Committee constituted by NSE having office at "Exchange Plaza" Plot No.5, 5th Floor, Bandra-Kurla Complex, Bandra (E), Mumbai 400 051.

5. Securities & Exchange Board of India, A Statutory body constituted under the Securities and Exchange Board of India Act, 1992 having its office at Mittal Court, 1st Floor, C Wing, Nariman Point, Mumbai 400 021.

6. Bhavesh Dhirajlal Stock Broking Co. Ltd., A Share and Stock Broker, Trading Member of National Stock Exchange of India Ltd., having office at East & West Building, 55, Bombay Samachar Marg, Mumbai 400 021. .. Respondents

WRIT PETITION NO.2055 OF 2004

Lachhmandas Lundiaram Narang, of Mumbai, Indian Inhabitant, Karta of L.L.Narang HUF, A Hindu Undivided Family, having my office at Curremjee Building, 2nd Floor, 111, Mahatma Gandhi Road, Fort, Mumbai 400 025. .. Petitioner

V/s

1. National Stock Exchange of India Ltd. A Company incorporated under the

provisions of the Companies Act,
1956 having its registered office at
"Exchange Plaza", Plot No.5,
5th Floor, Bandra-Kurla Complex,
Bandra (E), Mumbai 400 051.

2. National Securities Clearing
Corporation Ltd., A Company incorporated
under the provisions of the Companies
Act, 1956 as 100% subsidiary company
of National Stock Exchange of India
Ltd. having its registered office at
"Exchange Plaza", Plot No.5,
5th Floor, Bandra-Kurla Complex,
Bandra (E), Mumbai 400 051.

3. National Stock Exchange Investor
Protection Fund Trust, A Trust created
under the Public Trust Act by NSE of
India Ltd., having office at
"Exchange Plaza", Plot No.5,
5th Floor, Bandra-Kurla Complex,
Bandra (E), Mumbai 400 051.

4. Defaulter Committee- A/c.Bhavesh
Dhirajlal Stock Broking Co.Ltd.
A Committee constituted by NSE of India
Ltd., having office at "Exchange Plaza"
Plot No.5, 5th Floor,
Bandra-Kurla Complex,
Bandra (E), Mumbai 400 051.

5. Securities & Exchange Board of India,
A Statutory body constituted under the
Securities and Exchange Board of India
Act, 1992 having its office at Mittal
Court, 1st Floor, C Wing, Nariman Point,
Mumbai 400 021.

6. Bhavesh Dhirajlal Stock Broking Co.
Ltd., a Company incorporated under the
provisions of the Companies Act, 1956,
A Share and Stock Broker,
Trading Member of National Stock
Exchange of India Ltd., having office
at East & West Building,
55, Bombay Samachar Marg,
Mumbai 400 033. .. Respondents

WRIT PETITION NO.2056 OF 2004

Kishor L.Narang of Mumbai,
Indian Inhabitant, having his office
at Curremjee Building,

2nd Floor, 111, Mahatma Gandhi
Road, Fort, Mumbai 400 025. .. Petitioner

V/s

1. National Stock Exchange of India Ltd.
   A Company incorporated under the
   provisions of the Companies Act,
   1956 having its registered office at
   "Exchange Plaza", Plot No.5,
   5th Floor, Bandra-Kurla Complex,
   Bandra (E), Mumbai 400 051.

2. National Securities Clearing
   Corporation Ltd., A Company incorporated
   under the provisions of the Companies
   Act, 1956, a 100% subsidiary company
   of National Stock Exchange of India
   Ltd. having its registered office at
   "Exchange Plaza", Plot No.5,
   5th Floor, Bandra-Kurla Complex,
   Bandra (E), Mumbai 400 051.
3. National Stock Exchange Investor
   Protection Fund Trust, A Trust created
   under the Public Trust Act by NSE of
   India Ltd., having its office at
   "Exchange Plaza", Plot No.5,
   5th Floor, Bandra-Kurla Complex,
   Bandra (E), Mumbai 400 051.

4. Defaulter Committee- A/c.Bhavesh
   Dhirajlal Stock Broking Co.Ltd.
   A Committee constituted by NSE of India
   Ltd., having its office at
   "Exchange Plaza" Plot No.5, 5th Floor,
   Bandra-Kurla Complex,
   Bandra (E), Mumbai 400 051.

5. Securities & Exchange Board of India,
   A Statutory body constituted under the
   Securities and Exchange Board of India
   Act, 1992 having its office at Mittal
   Court, 1st Floor, C Wing, Nariman Point,
   Mumbai 400 021.

6. Bhavesh Dhirajlal Stock Broking Co.
   Ltd., a Company incorporated under the
   provisions of the Companies Act, 1956,
   A Share and Stock Broker,
   Trading Member of National Stock
   Exchange of India Ltd., having its
   office at East & West Building,
   55, Bombay Samachar Marg,
   Mumbai 400 033. .. Respondents

Mr.N.N.Seervai, Senior Advocate with Mr.Shyam Mehta, Ms.Puja Puri and Ms.Christabel Afonso instructed by M/s. Hariani & Co. for the Petitioner, in **W.P.No.2392/2003 and W.P.No.2735/2004.**

Mr.Shyam Mehta with Ms.Puja Puri and Ms.Christabel Afonso instructed by M/s.Hariani & Co. for Petitioner in **W.P.2764/2004.**

Mr.Rajiv Narulla i/by M/s.Jhangiani Narulla Associates for Petitioners in **W.P.No.395/2004, W.P.No.1959/2004, W.P.1961/2004, W.P.2022/2004, W.P.2047/2004 & W.P.2048/2004.**

Mr.U.J.Makhija with Ms.Preeti Shah for the Petitioners in **W.P.No.2055/2004 & W.P.2056/2004.**

Mr.E.P.Bharucha, Senior Advocate with Mr.V.K.Ramabhadran for Respondent No.1 (N.S.E.). **in all Petitions.**

Mr. Subash Jha with Mr.Jimesh Shah and Ms.Laxmi Memon instructed by M/s.Law Global for respondent No.5 **in all Petitions.**

CORAM: DR.S.RADHAKRISHNAN &
SMT.V.K.TAHILRAMANI, JJ.

DATE OF DECISION : 15.12.2005
DATE OF GIVING REASONS : 13.04.2006

JUDGMENT: (PER DR.S.RADHAKRISHNAN,J.)

1. The issue involved in the aforesaid petitions is common and therefore we are disposing of all the aforesaid petitions by this common Judgment.

2. So far as Writ Petition No.2392 of 2003 is concerned, the Petitioner is praying that the Guidelines issued by Respondent No.1 and Respondent Nos.4 to 8 on 2nd April, 2002 be declared as illegal and ultravires of the Bye-laws of Respondent No.1 as well as the 1996 Guidelines. The Petitioner has also prayed for a writ

order or direction under Article 226 of the Constitution of India, calling for the records of the case and after going into the legality, validity and propriety of the same quashing and setting aside the Guidelines issued by Respondent No.1 and Respondent Nos.4 to 8 on 2nd April, 2002. The Petitioner has also prayed that the decisions communicated to the Petitioners vide their letters dated 26th April, 2002, 17th June, 2002 and 16th January, 2003 respectively be quashed and set aside. Similarly, the Petitioner has also prayed for a writ order or direction under Article 226 of the Constitution of India against the Respondents ordering and directing Respondent No.1 and Respondent Nos.4 to 8 to forthwith withdraw and cancel the said Guidelines dated 2nd April, 2002 and further restrain the said Respondents from acting pursuant thereto whilst deciding the Petitioners claim for being compensated under the Investors Protection Fund. The Petitioner has also prayed for an order or direction directing Respondent No.1 to act in strict compliance with and to scrupulously follow the provisions of Chapter XIII of its Bye-laws made under Section 9 of the Securities Contacts (Regulation) Act, 1956 (hereinafter referred to as SCR Act, 1956 for brevity sake) as also the 1996 Guidelines and to fully compensate the Petitioner from its Investors Protection Fund for the losses suffered by him on account of the default of the Respondent No.3 with interest. The Petitioner has further prayed for a writ or order or

direction to Respondent No.2 to ensure that Respondent No.1 complies with its Bye-laws and compensates the Petitioner fully for the losses suffered by him on account of the default of Respondent No.3.

3. The brief facts are as under:-

. The Petitioners are all individual investors who had placed funds in the hands of their broker, Respondent No.3 for investment in the Automatic Lending and Borrowing Mechanism (hereinafter called as "ALBM" for the sake of brevity) of the National Stock Exchange. It appears that the Respondent No.3 used the abovementioned amounts meant for investing on the ALBM, to finance its personal trading losses and had been issuing fraudulent and false contract notes to its clients, including the Petitioners. As per the provisions of Chapter 13 of the Byelaws of the National Stock Exchange, the National Stock Exchange is required to maintain an Investor Protection Fund and to administer the same as per the byelaws set out therein. The National Stock Exchange set up an independent trust for the purposes of administering and managing the amounts earmarked towards the Investor Protection Fund and has delegated to the trustees the power to prescribe a procedure for the settlement of claims. The trustees appointed by the National Stock Exchange framed guidelines in 1996 for settlement of claims out of the Investor Protection

Fund. The relevant clause of these guidelines is reproduced as under:

II 1. Nature of claims allowed

Claims of the investors should generally fall into the following categories:

(iii) Claims arising out of money in the hands of the trading member pending investment or money in the hands of the trading member which has been improperly dealt with."

4. It appears that on or about 3rd April, 2001 the Petitioners had made complaints to the National Stock Exchange with respect to the fraud perpetrated on them by Respondent No.3 and requested the National Stock Exchange to compensate them through its Investor Protection Fund for the loss caused to them. In or about June, 2001 the National Stock Exchange appointed chartered accountants to carry out an inspection/audit of the claims made by the Petitioners and many other investors in relation to Respondent No.3. The National Stock Exchange instead of instructing the chartered accountants to ascertain the claims made by the petitioners and other investors on the basis of the said guidelines, instructed the chartered accountants appointed by them to ascertain the claims made on the basis of a comparison between the contract notes submitted by the Petitioners with the data available on the NEAT system of the National Stock Exchange. The chartered accountants appointed by the National Stock

Exchange submitted two reports in this regard, the first one on 2nd November, 2001 and the second one on 2st February, 2002 respectively, on the basis of transactions tallying with the NEAT system of the National Stock Exchange. It is the second report dated 21st February, 2002 that forms the basis of the final rejection of the Petitioners claim by the National Stock Exchange. The said report clearly states that the claims were processed on the basis of transactions tallying with the National Stock Exchange's NEAT system.

5. On or about 2nd April, 2002, the trustees appointed by the National Stock Exchange sought to review and decide the basis for admitting claims and basis for allocation of assets in respect of defaulter/ expelled members vesting in defaulters committee and also the basis for payment out of investors protection fund and to lay down further guidelines (April 2002 guidelines) in this regard. It is in these guidelines that a reference to the NEAT system is to be found for the first time. It is the case of the Petitioners that these guidelines are in fact nothing but a reproduction of the procedure that was adopted by the National Stock Exchange in deciding the claims made by various investors. It is submitted that these quidelines are nothing but an attempt to retrospectively give legitimacy to a completely arbitrary system that was adopted by the National Stock Exchange in deciding the

claims made by the Petitioners and other Investors similarly placed. It is pertinent to note that the National Stock Exchange has compensated some of the other investors who had also placed funds with the Respondent No.3 for investment on the ALBM system.

6. It is submitted by the Petitioners that the Petitioners had made their claim in April 2001 and were examined by the National Stock Exchange/ National Stock Exchange appointed accountants between June 2001 and February 2002. The NSE ought to have decided the Petitioners claim for compensation through the investor protection fund on the basis of the byelaws and the 1996 guidelines, which were in force at the relevant time. The Petitioners substantive rights in this regard accrued when their claims were made in April, 2001. The methodology used by them in deciding the claims' is not only arbitrary and dehors the byelaws and the 1996 guidelines, but is ex-facie contrary thereto.

7. It is further submitted by the Petitioners that the 1996 guidelines require that all claims **"arising out of money in the hands of the trading member pending investment or money in the hands of the trading member which has been improperly dealth with"** (emphasis supplied) are required to be compensated through the investor protection fund. The NSE has never disputed the fact that the Petitioners had placed funds in the

hands of the trading member for investment in the ALBM. Nor is there any dispute about the fact that the trading member has improperly dealt with the money that was placed in its hands by the Petitioners. As far as the Petitioners are aware the National Stock Exchange has duly declared the trading member as a defaulter. Furthermore, the National Stock Exchange arbitrators have in fact passed awards in favour of some of the Petitioners confirming the fact that amounts are due from Respondent No.3 to the respective Petitioners. It is submitted by the Petitioners that, had the National Stock Exchange applied the 1996 guidelines, as it was bound to do in deciding the Petitioners claim, the Petitioners would have had to be compensated. The National Stock Exchange instead proceeded to decide the claims on the basis of a completely adhoc and arbitrary procedure, which was not part of the guidelines prepared by the trustees, but was ex-facie inconsistent with and contrary thereto. It is further submitted by the Petitioners that the guidelines which the National Stock Exchange is seeking to rely on in support of its decision to reject the Petitioners' claim, were framed in April, 2002 i.e. long after the Petitioners had duly filed their claims and even long after the same, having been entertained by the National Stock Exchange, had been decided by the Chartered Accountants on 21st February, 2002. According to the Petitioners, the National Stock Exchange was bound to make a decision

with regard to the Petitioners claim for compensation on the basis of the 1996 guidelines. The attempt on the part of the National Stock Exchange to retrospectively apply the April, 2002 guidelines to the Petitioners claim is completely illegal and arbitrary and without any basis whatsoever. The Petitioners has further submitted that the conduct of the National Stock Exchange in this regard is improper. According to the Petitioners, though the decision to reject the Petitioners claim was taken as far back as 21st February, 2002 when the Chartered Accountants Report became available, the National Stock Exchange knowing full well that the said decision was completely contrary to and ultra vires its 1996 guidelines, deliberately did not communicate the said decision to the Petitioners till such time as it purported to amend its guidelines in April 2002 in a misconceived attempt to give legitimacy to its said decision. Mr.Seervai, the learned Senior Counsel has further submitted that from the affidavit dated 14th November, 2003 filed on behalf of the National Stock Exchange in Writ Petition No.2392 of 2003, it is clear that the decision taken by the Trustees was based entirely on the abovementioned decision of the Chartered Accountants. The learned Counsel for the Petitioners has submitted that the National Stock Exchange is not entitled in law to retrospectively apply the 2002 guidelines, even presuming them to be prospectively valid, to the claims

of the Petitioners. The Petitioners claims are governed by and are to be decided according to the 1996 guidelines. The learned Counsel for the Petitioners has therefore submitted that the attempt to retrospectively apply 2002 guidelines was impermissible in law and there was absolutely nothing in 2002 guidelines to warrant their retrospective application to take away crystallised and vested substantive rights conferred on the Petitioners by Statute. In support of his submissions, the learned Senior Counsel for the Petitioners Mr.Seervai has relied upon certain the decisions of the Supreme Court.

8. The learned Counsel for the Petitioners has further submitted that the Petitioners' rights, conferred substantively by legislation (whether primary or subordinate) cannot be taken away or whittled down by procedural guidelines framed by the National Stock Exchange itself, or by the trustees, as delegates of the National Stock Exchange. According to Mr.Seervai, the substantive right is conferred under Chapter XIII of the Byelaws of the National Stock Exchange. These Byelaws have been made by virture of Section 9 of the SCR Act, 1956. The learned Counsel for the Petitioners has submitted that the trustees are not entitled to frame guidelines except in conformity with Chapter XIII, and which do not derogate from the substantive rights conferred on investors. The 2002 guidelines clearly

purport to do so. The National Stock Exchange and/or its delegate (i.e.the trustees) wholly lack the power, authority or jurisdiction to frame such procedural guidelines, and therefore, the same are ex-facie ultra vires, illegal and void. In support of his submission, the learned Counsel for the Petitioners, Mr.Seervai has relied upon certain decisions of the Supreme Court.

9. With regard to the preliminary objection raised by the National Stock Exchange that **no writ petition can lie against the trust set up by the National Stock Exchange for the purpose of administering the investor protection fund or against the National Stock Exchange, which is a Company,** the learned Counsel for the Petitioners has submitted that it is well settled that when a private body exercises public functions, the aggrieved party has a remedy not only under the ordinary law but also under the Constitution of India by way of a writ petition under Article 226. The learned Counsel for the Petitioners has submitted that this Court has already held that the Bombay Stock Exchange is amenable to the writ jurisdiction of the High Court under Article 226 of the Constitution of India. Relying upon the decisions of this Court as well as the Supreme Court, reported in **AIR 1991 Bom.30 - Mrs.Sejal Rikesh Dalal & Ors.V/s.Stock Exchange, Mumbai, (2001) All M.R.544 - Trilochana K.Doshi V/s.Stock Exchange of India & Another, and (2005) 4 SCC 649 - Zee Telefilms Limited**

and Another V/s.Union of India & Another, the learned Counsel Mr.Seervai for the Petitioners has submitted that this question is no longer res integra.

10. With regard to another preliminary objection of the National Stock Exchange that **no writ of Mandamus seeking compensation would lie**, the learned Counsel for the Petitioners has submitted that the Petitioners have a statutory right to be compensated through the investor protection fund of the National Stock Exchange. The Petitioners primary challenge is to the illegal and arbitrary manner in which the National Stock Exchange has considered its application in this regard. According to the learned Counsel for the Petitioners, the question that arises for the consideration of this Court is whether the National Stock Exchange is entitled to decide such claims in a manner contrary to its own bye laws and guidelines and whether it is entitled to frame guidelines contrary to its own bye laws and apply the same retrospectively. It is submitted by Mr.Seervai, the learned Senior Counsel on behalf of the Petitioners that the actions of the National Stock Exchange are ex-facie ultra-vires, without any authority of law and hence void. According to the Petitioners if this Court upholds the Petitioners challenge to the ultra vires actions of the National Stock Exchange in this regard, the consequence will be that the National Stock Exchange is bound to compensate the Petitioners. The monetary compensation is therefore purely consequential to the main or primary relief sought by

the Petitioners. The entire controversy in the present case turns on the interpretation of the byelaws and guidelines of the National Stock Exchange and on the application of the same to the petitioners claim for compensation from the investor protection fund. The learned Counsel for the Petitioners has submitted that it is now settled law that a writ petition involving a consequential relief of a monetary claim is maintainable. In support of this contention, the learned Counsel Mr.Seervai for the Petitioners has referred to and relied upon certain decisions of the Supreme Court reported in **Andi Mukta Sadguru V/s.V.R.Rudani & Ors. (1989) 2 SCC 691 and ABL International Ltd. V/s. Export Credit Guarantee Corporation of India Ltd.(2004) 3 SCC 553.**

11. It is submitted by the learned Counsel for the Petitioners, that the Petitioners claims were disallowed on the basis of Clauses 2(i) and 2(ii) of the 1996 Guidelines in view of the fact that none of the contracts had been executed through the NEAT System; the amount deposited by the Petitioners with Respondent No.3 were not "connected with the purchase and sale of securities" and that any amount intended to be placed in ALBM would amount to a speculative transaction falling under 2(ii) of the Guidelines and hence the trustees were not liable to pay any losses borne in this regard by the constituents. In this regard, the learned Counsel for the Petitioners has submitted that there is

no requirement whatsoever under the 1996 Guidelines for transactions to have been executed on the NEAT system in order for a constituent to be compensated through the investor protection fund for a loss arising in this regard. On the contrary, the 1996 guidelines contemplate that compensation would be payable even with regard to claims arising out of money in the hands of the trading member pending investment, or which has been improperly dealt with. Afortiori therefore compensation is not restricted to losses with respect to transactions executed only on the NEAT system. Without prejudice to what is stated hereinabove, it is submitted by Mr.Seervai that the 2002 Guidelines (which have no application to the Petitioners), in so far as they purport to introduce conditions contrary to or inconsistent with the bye laws of the exchange, are ex-facie illegal, ultra vires and unenforceable.

12. The learned Counsel Mr.Seervai for the Petitioners has further submitted that the National Stock Exchange has in fact compensated several constituents of Respondent No.3 who had placed funds with it purely for the purpose of investing the same in the ALBM. It is submitted that in these circumstances it is extremely surprising that the National Stock Exchange is now seeking to contend that the Petitioners were not entitled to be compensated on account of the fact that the amount deposited by the Petitioner with Respondent

No.3 was not "connected with the purchase and sale of securities" or that any amount intended to be placed in ALBM would amount to a speculative transaction falling under 2(ii) of the Guidelines and hence the trustees were not liable to pay any losses borne in this regard by the constituents. Mr.Seervai submitted that both these statements are clearly an afterthought and are belied by the National Stock Exchange's own conduct in compensating some of the constituents of Respondent No.3 who had sustained losses with respect to funds placed with Respondent No.3 purely for the purposes of ALBM transactions.

13. The learned Counsel for the Petitioners Mr.Seervai, has submitted on behalf of the Petitioners that the National Stock Exchange has completely overlooked the provisions of Clause II 1(iii), which stipulates in no uncertain terms that all claims **"arising out of money in the hands of the trading member pending investment or** m**oney in the hands of the trading member which has been improperly dealt with"** are required to be compensated through the investor protection fund. If the National Stock Exchange had decided the Petitioners claim for compensation on the basis of the abovementioned guideline, as they were bound to do, there is no doubt that the Petitioners were entitled to be compensated through the investor protection fund of the National Stock Exchange.

Submissions of Respondent No.1 & Respondent Nos.4 to 8.

14. The learned Senior Counsel Mr.Bharucha for the Respondent No.1 and the Respondent Nos.4 to 8 has submitted that the Petitioner- Satya Prakash Aggarwal is an individual investor who claims to have placed amounts with the Respondent No.3 purportedly for investing in the Automated Lending and Borrowing Mechanism (ALBM) of the National Stock Exchange-Respondent No.1. It was submitted that the Respondent No.1 (NSE) is a company incorporated under the provisions of the Companies Act, 1956 and is a recognised Stock Exchange. The 3rd Respondent at the relevant time was a broker with rights to trade on the National Stock Exchange. The learned Senior Counsel Mr.Bharucha has further submitted that a Deed of Trust dated 11th July, 1995 was executed by the National Stock Exchange as the Settlor for setting up a Trust known as National Stock Exchange Investor Protection Fund Trust (Trust). The said Trust is registered under the provisions of the Bombay Public Charitable Trust Act, 1950 under Registration No.E/16274 on 10.4.1996. Respondent Nos.4 to 8 are the present Trustees of the said Trust appointed under the Deed of Trust dated 11th July, 1995. The Deed of Trust provides that the net income from the Trust would be utilised by the Trustees interalia for the purpose of compensating

any loss which may be suffered by any person including a trading member or constituent arising from a trading member being declared as a defaulter by the NSE under its Bye laws upto a limit determined by the trustees. The learned Senior Counsel Mr.Bharucha for the Respondent Nos.1 and 4 to 8 has further submitted that the Petitioner claims to have from time to time engaged the services of the Respondent No.3 (a broker permitted to trade on the NSE) for placing funds on the ALBM. The learned Senior Counsel Mr.Bharucha has further submitted that on or about 3rd April, 2001 the NSE received a complaint from the Petitioner alleging that the Petitioner had placed a sum of Rs.5 lakhs with the Respondent No.3 and that the same was intended to be placed on his behalf in ALBM. The Petitioner had sought compensation from the Investor Protection Fund. In support thereof the Petitioner had furnished a copy of the purported bill dated 9th January, 2001 alongwith the purported contract dated 9th January, 2001. The Petitioner had also alleged that the 3rd Respondent had on a weekly basis issued to him contract notes in respect of the said amount indicating transactions carried out by the 3rd Respondent on Petitioner’s account and the balance due and payable to the petitioner. The Petitioner had enclosed copies of all the purported bills and contract notes issued by the 3rd Respondent. The Petitioner had further alleged that the 3rd Respondent was not in a position to pay back the

money and requrested the NSE to declare the Respondent No.3 as a defaulter.

15. The learned Senior Counsel for the Respondent Nos.1, 4 to 8 has further submitted that on or about 19th April, 2001, the Investor Grievances Cell of NSE forwarded the complaint to the Respondent No.3 broker for his response and simultaneously the Investor Grievances Cell verified from their records and found that none of the purported transactions tallied with the records of the NSE referred to as the NEAT System (i.e.the National Exchange for Automated Trading) and accordingly by a letter dated 28th April, 2001 the Petitioner was informed accordingly. In response to the said letter the Petitioner had submitted a purported extract of ledger copy of Respondent No.3 and also the certificate issued by the Bank. Thereafter, the Investor Grievances Cell of the NSE once again verified the transactions and found that none of the transactions tallied with the records as reflected in the NEAT system and accordingly communicated the same to the Petitioner. The NSE thereafter on or about 11.6.2001 had appointed M/s.C.C.Chokshi & Co. a well known Chartered Accountants firm to carry out an inspection audit of the claims made by many investors against the Respondent No.3. The said Chartered Accountants had perused the data available with the NSE for the relevant period. The learned Senior Counsel Mr.Bharucha has submitted

that it is pertinent to note that the NEAT system contains transaction number, price, time, quantity and the client code. The transaction number is a 15 digits number which begins with the year, month and date and also contains the serial number generated by the computer system of the Respondent No.1 (NSE). The last six digits of the transaction number constitutes the serial number. The data relating to the transaction, as contained in the contracts and as submitted by the Petitioner was then compared with the data available in the NEAT system and upon such comparison it was found by the Chartered Accountants that none of the transactions (15 digts number) reflected in the confirmation memos tallied with the records of the Respondent No.1 (NSE). The Chartered Accountants had checked the back office data of the broker and thereafter it was also cross checked with the data recorded in the NEAT system. It is submitted by Mr.Bharucha that the Chartered Accountants upon such comparison had found that the year, month and date for all the transactions executed in the National Stock Exchange were changed and that the date of the transaction was changed by a date which is a day prior to the date of the actual transaction on which the transaction was recorded on the National Stock Exchange. The Chartered Accountants had submitted a report dated 2.11.2001 alongwith the annexure, and in the said report it was observed pertaining to the Petitioner vis-a-vis the Respondent No.3 that none of

the transactions as per the contracts submitted by the Petitioner matched with the details of the transactions recorded on the NEAT system of the National Stock Exchange. In view thereof, the learned Counsel for the NSE has submitted that the claim of the Petitioner was not eligible for admission in accordance with the procedure. Further it is submitted by Mr.Bharucha on behalf of the NSE that in the meanwhile the Respondent No.3 was expelled from the trading membership of the Exchange w.e.f.11th August, 2001 and in accordance with its Bye laws a notice was also issued on 14th August, 2001 in the leading English Newspapers calling upon the Investors to lodge their claims within a period of three months from the date of publication. It is submitted that the Petitioner had made his claims before the NSE and had also filed a formal arbitration against Respondent No.3. It is submitted on behalf of the NSE that the Petitioner had also filed a criminal complaint against Respondent No.3, and that the Petitioner had received Rs.1,14,234.95 from the Respondent No.3 in the said criminal complaint. It is further submitted that in November, 2001 the Petitioner had lodged a revised claim with the NSE after deducting a sum of Rs.1,14,234.95 received by the Petitioner pursuant to the criminal proceedings filed against the Respondent No.3. It was submitted by Mr.Bharucha that the Petitioner alongwith the other investors had consented to compound the criminal offence committed by the

Respondent No.3.

16. Mr.Bharucha, the learned Senior Counsel further submitted on behalf of the NSE that certain representations were made by the investors including the Petitioner regarding the processing of claims. The said representations including that of the Petitioner were placed before the concerned committee for its consideration. Mr.Bharucha contended that the said claims were once again reviewed by the Chartered Accountants firm in relation to partially tallying the transactions and while reviewing the claims, the Chartered Accountants scrutinized whether the transaction number alone matched with the transaction number furnished by the Petitioner even if the year, month and date did not match with the transaction number generated by the NEAT system of the NSE. Thereafter the Chartered Accountants had verified the serial number of the contracts furnished by the Petitioner with the data available as per the NEAT system and based on such criteria it was found that only one of the several purported contracts of the Petitioner partially tallied with the details recorded in the NEAT system. The said transaction was for a value of Rs.2584. It was further found that in the case of the Petitioner, similar contracts with the same partially tallied transaction number were issued by the 3rd Respondent to 25 other constituents aggregating Rs.2,55,54,916/-. The

Chartered Accountants had therefore estimated the loss of each individual constituent based on the total value in proportion to the loss suffered by each of the constituents. Thus the claim of the Petitioner was found eligible to the extent of Rs.51 which was arrived at after adopting the method of pro-rata distribution of the eligible amount amongst all the constituents who were issued contracts with regard to the same transaction. It was observed by the Chartered Accountants firm in its report that none of the transactions as per the contracts submitted by the Petitioner completely matched the details of the transactions recorded on the NEAT system of the NSE. In view of the same, the claim of the Petitioner was not found eligible for admission in accordance with the procedure in place. It is submitted that the Petitioner would however be entitled to a pro-rata amount of Rs.51 based on a partially matching transaction. It is submitted on behalf of the NSE that since the amount received by the Petitioner from the Respondent No.3 was in the sum of Rs.1,14,234.95 which was more than the amount of Rs.51, hence the Petitioner was not entitled to any payment.

17. The learned Senior Counsel Mr.Bharucha for the National Stock Exchange has submitted that the Petition is not maintainable. It is submitted that the amount is claimed by the Petitinoer from NSE which is a Company

under the Companies Act or the Respondent Nos.4 to 8 who are trustees of a Charitable Trust. The NSE does not insure parties against the wrong doings of brokers who trade on the NSE. The said amount if payable is to be paid by the National Stock Exchange Investor Protection Fund Trust, a Trust registered under the provisions of the Bombay Public Trust Act, 1950. Hence, the Petition is essentially against a Company and a Trust. According to Mr.Bharucha neither the Company nor the Trust is a State as defined under Article 12 of the Constitution of India against whom a writ can be preferred under Article 226 of the Constitution of India. In support of his submissions, the learned Counsel for the NSE has referred to the decision of the Hon'ble Supreme Court in the case of **Federal Bank Ltd. v/s.Sagar Thomas- (2003) 10 SCC 733,** wherein, the Hon'ble Supreme Court has held as under:-

> "From the decisions referred to above, the position that emerges is that a writ petition under Article 226 of the Constitution of India may be maintainable against (i) the State (Government); (ii) an authority; (iii) a statutory body; (iv) an instrumentality or agency of the State; (v) a company which is financed and owned by the State; (vi) a private body run substantially on State funding; (vii) a private body discharging public duty or positive obligation of public nature; and (viii) a person or a body under liability to discharge any function under any statute, to compel it to perform such a statutory function". (paragraph 18 page 747)
>
> ".....Merely regulatory provisions to ensure such activity carried on by private bodies work within a discipline, do not confer any such status upon the company nor put any such obligation upon it which may

> be enforced through issue of a writ under Article 226 of the Constitution". (paragraph 33 - page 758)

18. In the alternative, Mr.Bharucha has submitted on behalf of the National Stock Exchange that even if it is amenable to the writ jurisdiction of this Court, a writ in the facts of the present case is not maintainable as the dispute in the present case is a contractual dispute and not breach of any fundamental rights under the Constitution of India. In support of the contention, the learned Senior Counsel for the NSE has referred to and relied upon the decision of the Hon'ble Supreme Court in the case of **Binny Ltd V/s Sadasivan - (2005) 6 SCC 657**, wherein the Supreme Court has held as under:-

> "It can very well be said that a writ of Mandamus can be issued against a private body which is not a State within the meaning of Article 12 of the Constitution and such body is ameanable to the jurisdiction under Article 226 of the Constitution and the High Court under Article 226 of the Constitution can exercise judicial review of the action challenged by a party. But there must be a public law element and it cannot be exercised to enforce purely private contracts entered into between the parties".

19. It was further submitted on behalf of the NSE that even though this Court has held that a writ is maintainable against a Stock Exchange, atleast two other High Courts have held that a writ will not lie against a Stock Exchange. In the premises, it was submitted by Mr.Bharucha that the present petition is not

maintainable.

20. The learned Senior Counsel Mr.Bharucha for the National Stock Exchange has submitted that, an alternate remedy is available to the Petitioner and the Petitioner has in fact availed of the same. The Petitioner has obtained an arbitration award against the Respondent No.3 and the proper recourse available to the Petitioner is to adopt execution proceedings against the Respondent No.3 to recover his dues. Referring to the criminal complaint proceedings filed by the Petitioner against the Respondent No.3, the learned Senior Counsel for the NSE has submitted that actually the Petitioner has already recovered an amount of Rs.1,14,234 from the Respondent No.3.

21. The learned Senior Counsel Mr.Bharucha for the NSE has further submitted that the claim of the Petitioner is not as per the NEAT system. The learned Counsel has pointed out the Byelaw XII(1) which sets out the circumstances in which a broker may be declared a defaulter. Byelaw XII(2) provides that trading member may be declared a defaulter if he fails to meet an obligation arising out of Exchange transactions. The declaration of a broker as a defaulter is essentially as a result of Exchange transactions. The learned Counsel for the NSE has submitted that after a broker is declared as a defaulter, certain consequences follow.

The assets of the defaulter to the extent they are lying with the Exchange to the credit of the defaulter and amounts due to the defaulter by other trading members shall vest in the Exchange. It is pertinent to note that the personal wealth and assets of the defaulter do not vest in the Exchange but only such assets are related to trading in the Exchange. Byelaw XII(23) deals with the priority of application of the assets of a defaulter broker to the extent they vest in the Exchange. The assets are first applied to the dues of the NSE, SEBI and National Securities Clearing Corporation Ltd. The next in the list of priorities is dues to the other trading members and to constituents and registered sub-brokers. Byelaw XII(23)(b) further provides that **"The payments as may be admitted by the Defaulters' Committee, as being due to other Trading Members and Constituents and registered sub-brokers of the defaulter for debts, liabilities, obligations and claims arising out of any contracts made by the defaulter subject to the Rules, Bye-laws and Regulations of the Exchange, provides that if the amount is insufficient then the amounts shall be distributed pro rata amongst other Trading Members, all the Constituents and registered sub-brokers of the defaulter".**

22. It is submitted on behalf of the NSE that several of the Byelaws are relevant to show that the Exchange is concerned only with transactions that go through the

NEAT System. Byelaw IX deals with transactions and settlements. Byelaw IX(3) interalia provides that **"Deals between trading members may be effected by electronic media or computer network or such other media as specified by the relevant authority from time to time".** It is submitted that the NSE has not approved of any other media other than electronic or computer network. Thus only transaction with the NSE has to go through its computers which is for the sake of convenience called the NEAT System. This provision ensures that the records of the trading member can always be verified from the records of the NSE. This important provision of verification is not available in the instant case. It is submitted that the main object of the Company is to provide specialised, advanced, automated and modern facilities for trading, clearing and settlement of securities...". The National Stock Exchange has at no stage provided non-electronic or non-computer based trading facilities. Thus all transactions on the NSE go through the NEAT system.

23. Mr.Bharucha, the learned Senior Counsel for the NSE has further submitted that some other Byelaws are also relevant. Byelaw IV(1) provides that dealings in securities shall be permitted on the NSE as provided in the Byelaws and save as so provided no other dealings are permitted. Contracts not in accordance with the Byelaws are thus not permitted. Byelaw V(2)(b) provides

that all contracts for deals on the Exchange shall be in accordance with the Byelaws, Rules and Regulations of the NSE. In the present case the facts set out above clearly show that contracts are not compliant. Byelaw VII(4) provides that all dealings in securities shall be made subject to the Byelaws, Rules and Regulations of the NSE.

24. The learned Senior Counsel Mr.Bharucha for the NSE has further referred to the Byelaw XII(24) which provides that the Defaulters' Committee shall not entertain any claim against a defaulter which arises interalia out of a contract not made subject to the Byelaws, Rules and Regulations of the NSE or out of a contract in respect of which comparison of accounts has not been made in the manner prescribed in the Byelaws, Rules and Regulations or when there has been no comparison if a contract note in respect of such contract has not been rendered as provided in the Byelaws, Rules and Regulations or which is in respect of a loan with or without security.

25. According to Mr.Bharucha, the learned Senior Counsel for the National Stock Exchange, the rationale for these mandatory provisions of the Byelaws is to prevent any collusive claims being made by constituents in collusion with the defaulting member. However, Mr.Bharucha, the learned Senior Counsel, has made it

clear that these Respondents do not for a moment allege that the present claim is collusive. The byelaws however have to provide for the very real possibility of collusion between a defaulter broker and his client. It is further pertinent to note that in most of the cases, the arbitration award is ex parte as the broker does not appear before the arbitrator. The learned Counsel for the NSE has submitted that the Byelaw XIII deals with the Investor Protection Fund. According to him, the benefit of the protection fund is expressly made available only in respect of loss arising out of a trading member declared a defaulter under Byelaw XIII. According to him the term "any person" who suffers a loss arising out of any trading member being declared a defaulter by the Exchange has to read in the narrow sense of any investor or constituent. It is very likely that a broking firm / trading member declared a defaulter will close down and the employees of such a defaulter will be thrown out of jobs. Read widely, the employees of the defaulting members will also seek protection of the Investor Protection Fund. This is not the intention of the Fund. The benefit of the Investor Protection Fund should be restricted to Investors of the defaulter or the persons claiming through such investors.

26. The learned Senior Counsel for the National Stock Exchange has further referred to the provisions of

Byelaw XIII(8) which expressly provides that the person seeking any benefit of the Fund has to produce evidence necessary to support his claim. The documents of proof necessarily in the case of a constituent will be the contracts in accordance with the Byelaws etc. of the NSE and which tally with the records of the National Stock Exchange i.e.the NEAT System. If these precautions are not taken the Investor Fund may be flooded with collusive claims. According to the learned Senior Counsel the NSE is not making any allegation that the present claim is collusive. The NSE is however not concerned only with the present case and has to abide by its Byelaws. The learned Counsel for the NSE has further submitted that the NSE had set up an independent trust for the purpose of administering and managing the amounts earmarked specifically towards the Investor Protection Fund. Such a trust was created by a Deed of Trust dated 11th July, 1995 and is registered under the Bombay Public Trust Act. Referring to the Clause 10(i) of the said Trust Deed the learned Counsel for the NSE has submitted that the said clause inter alia provided that the net income from the trust would be utilised by the trustees inter alia for the purpose of compensating any loss which may be suffered by any person including a trading member or constituent arising from a trading member being declared as a defaulter by the settler (NSE) under Chapter XII of the Settler’s Bye law upto a limit as may be determined by the trustees. According

to him, the express reference to Chapter XII clearly implies that the payment can only be in respect of a loss admissible under Chapter XII of the Byelaws. Thereafter the learned Counsel for the NSE has referred to Clause 12 of the Trust Deed which inter alia provides that the settlement of claims by the trust shall be in accordance with the procedure prescribed by the trustees from time to time. According to him, at the relevant time when the Investor Protection Fund was set up, the Automatic Lending Borrowing Mechanism (ALBM) had not been introduced by the National Securities Clearing Corporation Limited.

27. Mr.Bharucha, the learned Senior Counsel for the NSE has further dealt with the Guidelines for the Automatic Lending Borrowing Mechanism which specially provide that "**A participant who desires to borrow securities shall execute a purchase transaction in the spot book on NSE (hereinafter referred to as 'ALBM Session')**. **Likewise any member willing to lend securities shall execute a sale transaction in the ALBM Session".** The learned Senior Counsel for the NSE has therefore submitted that these provisions make it clear that even though the ALBM is not sale or purchase of shares, the transaction will be recorded on the NEAT System. Thereafter, the learned Senior Counsel for the NSE dealt with the Guidelines laid down by the Trustees in the meeting held on 27th February, 1996 for allowing the claims and also the

criteria for disallowing the claims. According to him, as per the said Guidelines, it would be noticed that the Petitioner's claim would be disallowed as the same would be covered under Clause 2(i), inasmuch as, admittedly, none of the contracts had been transacted through the National Exchange for Automated Trading (NEAT) System. The learned Senior Counsel has submitted that the Guidelines merely provide for the procedure of settlement of claims by the Fund. According to him, the Guidelines have to be read in furtherance of the Byelaws as set out above, and if so read, the NSE and the Fund are justified in not accepting claims in respect of contracts which did not go through the NEAT System inasmuch as the same cannot be verified. In fact the partial co-relation on which the claims were paid by the Fund amounts to relaxation of the Byelaws in favour of the Investors.

28. The learned Senior Counsel for the National Stock Exchange has contended that it is very relevant to note that the Police Complaint made by the Petitioner states that the money was for Badla Transaction. According to the learned Counsel for the NSE, the Badla Transactions, however, would never go through the NEAT System. The learned Senior Cousnel for the NSE has contended that it is further relevant to note that in the Statement of Claim filed by the Petitioner before the NSE it is admitted that the Respondent No.3 has used the amounts

to finance its personal trading loss instead of investing on the ALBM, and it is also admitted that the Respondent No.3 had been issuing fraudulent and false contract notes. According to him it is thus an admitted position that the transactions were not recorded in the records of the NSE. It is submitted that the Investors Protection Fund has been set up by the Exchange primarily to compensate any loss that may be suffered by a constituent or a trading member provided however that the claim made by the constituent has to be based on transactions executed through the Exchange. According to the learned Senior Counsel for the NSE, it is very clear that for considering any claim to be valid it must be substantiated by the transaction done/executed and recorded on the NEAT System of the NSE, and that the evidence of payment/proof of delivery of securities by the claimant to the trading member should also be produced. According to him it is an admitted position by the Petitioner himself that the Respondent No.3 had been issuing false contracts and the Petitioner himself has reflected the said fact in his complaint dated 3rd April, 2001 filed with the Deputy Commissioner of Police, Mumbai.

29. The learned Senior Counsel for the National Stock Exchange has further contended that it is very clear that the Fund or the Trustees' Guidelines cannot exceed the provisions of the Byelaws. According to him, as

pointed out hereinabove, the NSE had appointed an independent Chartered Accountants firm to scrutinize the claims of various investors who purported to have placed funds with the Respondent No.3, and the Chartered Accountants, in turn, had scrutinized the claims of all the Investors including that of the Petitioner and had arrived at a compensation of Rs.51/- so far as the claim of the Petitioner was concerned. However, according to the learned Senior Counsel for the NSE, even the said sum of Rs.51/- was not found to be payable as the amount receivable/received by the Petitioner from other sources was in excess of the amount to be paid. In view of the aforesaid facts, the learned Senior Counsel for the NSE has submitted that it is very clear that none of the transactions were tallied with the records as reflected in the NEAT System, and in the circumstances, neither the NSE nor the Trust is liable to compensate the Petitioner from its Funds.

30. While dealing with the contention of the Petitioner in the Petition that **the claim made by the petitioner was allegedly eligible as per the 1996 Guidelines but are barred by the 2002 Guidelines and hence the 2002 Guidelines are ultra vires and cannot be made applicable with retrospective effect**, the learned Senior Counsel for the NSE has submitted that the aforesaid contention of the Petitioner is incorrect. According to the learned Senior Counsel for the NSE the Guidelines are

subordinate to the Byelaws and have to be read only in furtherance of the Byelaws. The learned Senior Counsel for the NSE has further submitted that the 1996 Guidelines also preclude payment for transactions not connected with purchase or sale of securities on the NSE. Referring to clause 2 of the 1996 Guidelines which deal with claims to be disallowed, the learned Senior Counsel for the NSE has submitted that the claim of the Petitioner would be covered under the aforesaid clause 2(i) inasmuch as, admittedly none of the contracts had been transacted through the NEAT System and hence the said claim would be disallowed. According to the learned Senior Counsel for the NSE, the amount purported to have been deposited by the Petitioner with the Respondent No.3 is not "connected with the purchase and sale of the securities". According to him, the said amount was placed by the Petitioner for Badla Transaction, which would per se amount to a speculative transaction falling under 2(ii) of the Guidelines and hence the trustees are not liable to pay any losses to the constituents. The learned Senior Counsel for the NSE has further contended that the Petitioner or the persons similarly situated will not be entitled to compensation from the Fund merely on a bare reading of the Guidelines, as the Guidelines have to be read in furtherance of the Byelaws.

31. Thereafter, the learned Senior Counsel for the NSE

has submitted that it was reiterated by the trustees in their meeting held on 2nd April, 2002 that only the genuine and bonafide claims in respect of which an order/trade is recorded in the NEAT System would be eligible for consideration.

32. While dealing with the Petitioners argument that **they were entitled to be indemnified under clause 3.4 of the Operating Guidelines for ALBM issued by the National Securities Clearing Corporation Limited (a subsidiary of the NSE),** the learned Senior Counsel for the NSE has submitted that Clause 3.4 states that the approved intermediary shall indemnify participants and keep participants fully and effectively indemnified against any direct loss of securities and the money, caused by negligence, act of omission or commission by the approved intermediary or its employees. The learned Senior Counsel for the NSE has submitted that, in the premises, the indemnity referred to is in respect of any direct loss caused by the approved intermediary or its employees. According to the learned Senior Counsel for the NSE, in the instant cases, it has not even been alleged that the act or omission on the part of the approved intermediary has caused any loss, and hence the aforesaid clause 3.4 is entirely inapplicable to the present case. The learned Senior Counsel for the NSE has further submitted that so far as the aforesaid clause 3.4 is concerned it indemnifies brokers and not

their constituents.

33. While dealing with the Petitioners argument that **the disputes in question were referred to Arbitration under Chapter XI of the Byelaws and thus it would imply that the transactions in questin were recorded and passed through the records of NSE, i.e.the NEAT System,** the learned Senior Counsel for the National Stock Exchange has submitted that the said Arbitration Clause which is in Byelaw IX, provides that all claims, differences or disputes inter alia between a trading member and constituents in relation to dealings, contracts and transactions made subject to the Bye-laws, Rules and Regulations of the Exchange or with reference to anything incidental thereto or in pursuance thereof or relating to their validity, construction, interpretation, fulfilment or the rights, obligations and liabilities of the parties thereto and including any question of whether such dealings, transactions and contracts have been entered into or not shall be submitted to arbitration in accordance with the provisions of these Byelaws and Regulations. According to the learned Senior Counsel for the National Stock Exchange, it is thus clear that the Arbitration Clause is wide and even the question of whether a transaction has been entered into or not can be referred to arbitration. According to him it is further relevant that some of the transactions may have gone through the

NEAT System fully or partially and the NSE has considered such claims to the extent they are recorded in the NEAT System. According to him, most arbitrations involving defaulting brokers (as in the instant case) are decided ex parte, and that NSE is not a party to the arbitration. The learned Senior Counsel for the NSE has therefore submitted that it is very clear that mere reference to arbitration does not amount to any admission on the part of the NSE that the transaction has gone through the NEAT System or that the loss caused to a constituent is such as is covered by the Byelaws. In the premises, therefore, the learned Senior Counsel for the NSE has submitted that the present Petition be dismissed with costs.

34. Mr.Jha, the learned Counsel for SEBI, sought to contend that the claims of the Petitioners are contractual in nature, hence the same cannot be enforced through writs and relied on certain decisions of the Supreme Court.

Submissions of Adv.Narulla in W.P.No.395 of 2004

35. Mr.Narulla, the learned Counsel appearing for the Petitioners in Writ Petition No.395 of 2004 has submitted that the decision taken by Respondent No.4

(Defaulter Committee) on behalf of Respondent No.2 (National Securities Clearing Corporation Ltd.) as communicated by letters dated 19.9.2002 and 1.1.2004 be declared as bad in law, illegal and void, and that the Respondent Nos.1 and 2 (viz.National Stock Exchange of India Ltd. & National Securities Clearing Corporation Ltd.) be directed to fully compensate the Petitioner in accordance with the provisions of Securities Lending Scheme/ A.L.B.M. Scheme for the loss suffered by the Petitioner on account of default of Respondent No.6 (Bhavesh Dhirajlal Stock Broking Company Ltd.). In the alternative, the learned Counsel for the Petitioner has also prayed that the Respondent Nos.1 and 2 be directed to fully compensate the Petitioner from their Investors Protection Fund for the loss suffered by the Petitioner on account of default of Respondent No.6. The learned Counsel for the Petitioner has also prayed for a direction to Respondent No.5 (Securities & Exchange Board of India) to ensure that the Respondent Nos.1 and 2 complies with its Bye-laws and compensate the Petitioner fully for the loss on account of default of Respondent No.6.

36. By this Petition, the Petitioner is therefore seeking to challenge the decision of Respondent Nos.3 and 4 (viz.National Stock Exchange Investor Protection Fund Trust & the Defaulter Committee) which is taken on behalf of the Respondent Nos.1 & 2 whereby the

compensation has been rejected for the losses incurred by the Petitioner on account of Respondent No.6 being declared as defaulter. According to the Petitioner the said decision (which is communicated by the letters dated 19.9.2002 and 1.1.2004) is ex facie contrary to the provisions of Security Lending Scheme of SEBI & the provisions of ALBM Scheme introduced by Respondent No.1 through Respondent No.2, and is also contrary to the provisions of the Byelaws of Respondent No.1.

37. The learned Counsel for the Petitioner has submitted that the Respondent No.6 was allotted trading membership by Respondent No.1, and the Respondent No.1 had also considered the eventualities of their trading member being declared defaulter and made provisions under Chapter XII of the Byelaws for dealing with the cases of defaults of their Trading Members which includes setting up a defaulter committee to take charge of assets of the defaulter brokers, realization of the assets of the defaulter, taking/initiating legal action against the defaulter to recover the moneys and distribution of surplus assets of defaulter amongst the claimants including constituents. The learned Counsel for the Petitioner has further submitted that the Respondent No.1 in confirmity with the guidelines issued by the Central Government and SEBI, has set up an Investors Protection Fund Trust as a charitable trust and made provisions pertaining to the fund under Chapter

XIII of the Byelaws which deals with creation of fund, utilization of fund money, distribution of moneys out of fund etc. The learned Counsel for the Petitioner has also submitted that the Respondent No.5 in the month of February, 1997 had framed a Scheme called "Securities Lending Scheme" with the main object to facilitate smooth settlement of trades at Stock Exchanges, and under the said Scheme the Respondent No.5 has made it mandatory that the Securities Lending Scheme can be functioned through an approved intermediary who will guarantee the return of equivalent securities of the same type and class to the lender alongwith the corporate benefits accrued on them during the tenure of borrowing. The Scheme further made provisions that in case of the failure of the borrower to return the securities or corporate benefits, the approved intermediary shall be liable for making good the loss caused to the lender. The learned Counsel for the Petitioner has submitted that the Respondent No.5 has approved Respondent No.2 as intermediary for the purpose of carrying out business of approved intermediary in the nanner and as per the procedure prescribed under the Scheme, and therefore, Respondent No.2 as an intermediary was under an obligation to carry on the business as defined under clause 6 of the Scheme. The learned Counsel for the Petitioner has submitted that the Automated Lending and Borrowing Mechanism (ALBM) Scheme was introduced by Respondent No.1 (National Stock

Exchange) through the Respondent No.2 (National Securities Clearing Corporation Limited) in order to assist their trading members to complete timely settlement of securities and funds. According to the learned Counsel for the Petitioner, since the Respondent No.2 has acted as approved intermediary to a security lending scheme for the benefit of their trading/clearing members, the Respondent No.2 has assumed full responsibilites for returning securities and monies to the lender. In other words, the Respondent No.2 is responsible for all the securities and monies borrowed by Trading Members of Respondent No.1 from their respective constituents. The learned Counsel for the Petitioner has further submitted that as per the Investors Guide to ALBM and the Operating Guidelines for ALBM the Respondent No.2 as an Intermediary had clarified the modus operandi of ALBM and stated that all active Trading Members of Respondent No.1 and Clearing Members of Respondent No.2 were eligible to participate in ALBM on their own account and on behalf of their clients. In Chapter 3 of the Operating Guidelines for ALBM it was stated that as per the Securities Lending Scheme, an approved Intermediary was required to ensure the return of equivalent securities back to the lender. In view thereof, the learned Counsel for the Petitioner has submitted that it was crystal clear that the ALBM was the official scheme introduced by Respondent No.1 through the Respondent No.2. According to the learned

Counsel for the Petitioner, the Petitioner and other investors had participated into the ALBM because it was a secured lending scheme introduced by Respondent No.1 through its subsidiary company Respondent No.2 who acted as intermediary. The learned Counsel has further submitted that the Petitioner and other investors have lent/borrowed securites to Respondent No.2 through the Trading Members of Respondent No.1 and Clearing Members of Respondent No.2, and therefore, the Respondent Nos.1 & 2 are liable to indemnify the investors who have not received back monies/securities from their trading member/clearing member/participants. The learned Counsel for the Petitioner has submitted that during the period from 29.3.2000 to 12.3.2001 the Petitioner has lent monies into ALBM Scheme through Respondent No.6 as participant of Respondent No.2 and Trading Member of Respondent No.1, and the Respondent No.6 has executed the transactions for lending of money and issued contract notes from time to time confirming thereby the details of the lending transactions executed by them as participant for and on behalf of the Petitioner. The learned Counsel for the Petitioner has submitted that the Respondent No.6 has also acknowledged the cheques issued by the Petitioenr and issued various bills during the said period of transactions and therefore confirmed having executed transactions for lending of money under the ALBM Scheme. Referring to the Exhibit J to the Petition, the learned Counsel for the petitioner has

submitted that the Respondent No.6 in compliance with the requirement provided under the Rules, Byelaws and Regulations of Respondent Nos.1, 2 and 5 had opened a ledger account in the name of the Petitioner and had passed entries in respect of all the bills and the cheque payments which shows a sum of Rs.61,77,727.71 as a credit balance in the name of the Petitioner. The learned Counsel for the Petitioner has further submitted that the Petitioner has followed up the matter with the Respondent No.6 and has asked for releasing the outstanding amount, but the Respondent No.6 has failed to make payment of the said outstanding amount. The learned Counsel for the Petitioner therefore has submitted that the Respondent No.6 as a participant under the ALBM Scheme has defaulted payment and Respondent No.2 as an intermediary has become liable to make the default good by making payment to the Petitioner. The learned Counsel for the Petitioner has referred to the Writ Petition No.393/2001 filed by Respondent No.6 before this Court for voluntary winding up of the Company, wherein the Respondent No.6 has attached a list of all the creditors with respective amounts payable and the Respondent No.6 has admitted that they are liable to pay a sum of Rs.61,77,727.71 to the petitioner.

38. The learned Counsel for the Petitioner has further submitted that the Investor Service Cell of Respondent

No.1 by their letter dated 24th May, 2001 has forwarded to the Petitioner their remark stating that some of the transactions/trades mentioned in the Contract Notes did not tally with the system and therefore they were off-market transactions/trades, however, the Respondent No.1 has not given any documentary evidence in support of their letter claiming about transactions not executed through their system. It is further contended by the learned Counsel for the Petitioner that if it is admitted for the sake of argument that the transactions shown under the contract notes were not routed through trading system of Respondent No.1 then also the Petitioner is entitled to get the amount refunded by Respondent No.2 as the Petitioner had lent money through Respondent No.6 as participant under ALBM Scheme and it was the responsibility of Respondent No.1 and 2 under their Regulations to ensure that their participant and Trading Memaber are carrying out their business of stockbroker strictly in compliance with Rules, Byelaws and Regulatios of Respondent Nos.1 & 2, SEBI Act and Securities Contract Regulation Act. In view thereof, the learned Counsel for the Petitioner has submitted that the Respondent Nos.1 & 2 cannot escape themselves from their responsibilities for their failure and cannot deny the claim of the petitioner.

39. Referring to the Award dated 22nd November, 2002 passed by the Arbitral Tribunal, Mr.Narulla, the learned

Counsel for the Petitioner has contended that as per the said Award the Petitioner is entitled to recover a sum of Rs.37,62,296.82 from Respondent No.6 in accordance with the provisions of the Rules, Byelaws and Regulations of Respondent No.1. The learned Counsel for the Petitioner has further submitted that since the Arbitral Tribunal has adjudicated that the Petitioner is entitled to recover a sum of Rs.37,62,296.82 from Respondent No.6, who acted as Participant of Respondent No.2 for ALBM Scheme, Securities Lending Scheme, the Respondent No.2 as an approved Intermediary has also become liable to indemnify the Petitioner and to pay the said amount.

40. The learned Counsel for the Petitioner has further submitted that even the Respondent No.4 viz.the Defaulter Committee appointed by Respondent Nos.1 and 2, has not complied with the requisitions of Chapter XII of the Byelaws and have acted arbitrarily while picking and choosing some of the investors for payment at their own sweet will or upon the conditions which are not recognized by the Byelaws. Referring to the letter dated 19.9.2002 addressed by Respondent No.4 -Defaulter Committee wherein it is stated that as against the Petitioner’s claim of Rs.46,27,823/- a sum of Rs.9,96,750/- was approved by an independent firm of Chartered Accountants, the learned Counsel for the Petitioner has strongly submitted that the Respondent

No.4 has deliberately not provided any documentary evidence on the basis of which a firm of Chartered Accountants has reduced the Petitioner's claim of Rs.46,27,823/- to Rs.9,96,750/-. According to him the Respondent No.4 -Defaulter Committee has illegally relied on the report given by Chartered Accountants firm. According to him, the procedure followed by the Respondent No.4-Defaulter Committee is totally contrary to the Security Lending Scheme, ALBM Scheme and the provisions of Chapter XIII of the Byelaws of Respondent No.1 and is also contrary to the object of creation of Investors Protection Fund.

41. The learned Counsel for the Petitioner has submitted that the Petitioner had suffered a loss of Rs.46,27,823/- and had lodged a claim of the said amount on Respondent No.1 for indemnification, and since during the pendency of claim the Petitioner has received an aggregate amount of Rs.11,86,903.33 from various sources, the Petitioner is having a claim of Rs.34,40,919.07 on defaulter member i.e.Respondent No.6 and entitled for indemnification by Respondent No.2 under the ALBM Scheme. The learned Counsel for the Petitioner has stated that the letter sent by Respondent No.1 dated 1st January, 2004 thereby denying their liability to indemnify the Petitioner in respect of the loss suffered by the Petitioner, is totally bad in law, illegal and void. Similarly, the learned Counsel for

the Petitioner has submitted that the decision taken by the Respondent Nos.3 and 4 as communicated by letter dated 19th September, 2002 is also arbitrary, bad in law, illegal and void as no reasons are mentioned for rejection of the Petitioner's claim. According to the learned Counsel for the Petitioner, the impugned decisions are against the principles of natural justice, arbitrary, capricious and liable to be set aside.

Sumbissions of Mr.Makhija, the learned Counsel for the Petitioner in W.P.No.2055 of 2004.

42. The learned Counsel for the Petitioner in W.P.No.2055 of 2004 has submitted that the decision taken by the Respondent Nos.3 and 4 (Viz.National Stock Exchange Investor Protection Fund Trust and Defaulter Committee) not to compensate the Petitioner as communicated by the letter dated 19.9.2002 is arbitrary, bad in law, illegal and void as no reasons are mentioned for rejection of the claim of the Petitioner. According to the learned Counsel for the Petitioner, the Respondent No.1 - National Stock Exchange of India Limited has failed to notify the basis on which certain amounts are taken as admissible and certain amounts are taken as not admissible for the prpose of the claim, and moreover the Respondent No.4 Defaulter Committee has failed to furnish to the Petitioner a copy of purported

report given by the Chartered Accountants Firm recommending the amount quantified as admissible. According to the learned Counsel for the Petitioner, the material on the basis of which the purported decision has been taken has not been disclosed and no opportunity was given to the Petitioner to present his case. The learned Counsel for the Petitioner has therefore contended that the impugned decision is against the principles of natural justice, arbitrary, capricious and liable to be set aside.

43. Relying upon the Deed of Trust and the Byelaws of the Respondent No.1- National Stock Exchange, the learned Counsel for the Petitioner has submitted that it can be seen that the claimant who has suffered a loss arising out of trading member being declared a Defaulter is entitled to be compensated for the actual loss suffered by him less the amount or the value of all monies or other benefits received or receivable by him from any source in reduction of the loss. The learned Counsel for the Petitioner has further submitted that the Respondent No.1 is not entitled to disallow the claims made by the Petitioner on the basis of any extra statutory conditions imposed by them which are beyoud the provisions of Security Lending Scheme, ALBM Scheme, provisions of their Bye Laws and which are in fact patently extraneous to the conditions mentioned in the said Scheme and Byelaws. According to the learned

Counsel they were bound to decide and adjudicate the claim as per the terms of the said scheme and as per their own Byelaws. The learned Counsel for the Petitioner has further submitted that the Petitioner has produced proof of the payment made by him to the Respondent No.6 and has also produced relevant SLB Confirmation Memos issued by the Respondent No.6 from time to time and therefore, there is no dispute whatever about the fact that the Respondent No.6 was liable to pay to the Petitioner his claim amount. The learned Counsel for the Petitioner has contended that the Respondent No.6 has processed and decided the claims made by various constituents of Respondent No.6 in a manner completely arbitrary and capricious and had started making payments to certain selected constituents of the defaulter broker but did not consider the claim lodged by the Petitioner though all the claimants belong to the same category. Therefore, according to the learned Counsel for the Petitioner, the pro-rata amount from the surplus assets were required to be distributed amongst all the investors, however, the Respondent No.4 has conducted their statutory duties in gross violation of the provisions of Chapter XII of the Byelaws of Respondent No.1.

44. The learned Counsel for the Petitioner has further contended that the entire procedure and method adopted by Respondent No.1 in processing the said claims is not

only arbitrary but has been extremely secretive and has lacked transparency. According to him, the Respondent No.5 by refusing to compensate the Petitioner for losses incurred on account of Respondent No.6, the Respondent No.5 has failed to perform its statutory duty to protect small investors. The learned Counsel for the Petitioner has even pointed out that despite complaints made by various investors to Respondent No.5, the Respondent No.5 has failed to initiate any steps against Respondent No.1 and 2 as it ought to have done. According to him, the effect of the impugned actions of Respondent Nos.1, 2, 3, 4 and 5 has resulted in violation of the Petitioner's rights as guaranteed under Articles 14 and 300A of the Constitution of India. Relying upon Clause 3.4 of the ALBM Scheme introduced by Respondent No.1, the learned Counsel for the Petitioner has strongly contended that the approved intermediary should guarantee to the investors against all the direct loss of securities and money caused by negligence, act of omission or commission by the Approved Intermediary or its employee. The learned Counsel for the Petitioner has further contended that, in view of the Respondent No.6 having been declared defaulter/expelled and the Petitioner having a valid and legal claim for the loss of money on account of failure of the Respondent No.6 to return the amount lent by the Petitioner under the ALBM Scheme, the Respondent No.2 is under an obligation to indemnify the Petitioner all the money loss caused to

the Petitioner.

45. The learned Counsel for the Petitioner has submitted that the Petitioner is entitled to a final claim of Rs.5,69,424.11 as due and recoverable from the defaulter member i.e.Respondent No.6, for which the Petitioner is entitled for return of amount lent under the ALBM Scheme or alternatively from Investors Protection Fund in accordance with the provisions of Chapter XIII of the Byelaws of Respondent No.1.

46. In view of the aforesaid facts and circumstances, the learned Counsel for the Petitioner has submitted that this Court should declare that the decisions taken by the Respondent No.4 on behalf of Respondent Nos.1 & 2 as communicated by letters dated 19.9.2002 to be bad in law, illegal and void, and the Respondent Nos.1 & 2 be directed to fully compensate the Petitioner in accordance with the provisions of Securities Lending Scheme/ ALBM Scheme for the loss suffered by the Petitioner on account of default of Respondent No.6. In the alternative, the learned Counsel for the Petitioner has also prayed for directions to Respondent Nos.1 and 2 to fully compensate the Petitioner from their Investors Protection Fund for the loss suffered by the Petitioner on account of default of Respondent No.6. Similarly, the Petitioner has also prayed that the Respondent No.5 be directed to ensure that the Respondent Nos.1 & 2

complies with its Byelaws and compensates the Petitioner fully for the loss on account of default of Respondent No.6. The Petitioner has also prayed for a direction to Respondent No.5 to conduct an enquiry in accordance with Section 11 of the SEBI Act into the affairs of Respondent Nos.1 & 2 regarding settlement/disbursement of the claims arising out of the Securities Lending Scheme / ALBM Scheme and submit its report to this Court.

Submissions of Mr.Mehta, the learned Counsel for the Petitioner in Writ Petition No.2764 of 2004.

47. Mr.Mehta, the learned Counsel for the Petitioner in the above Petition, has strongly submitted that the Respondent No.1 - National Stock Exchange of India has erred in its decision not to compensate the Petitioner for the losses incurred by him on account of the default of Respondent No.8 - Mr.Bhavesh Dhirajlal Sethia, and to selectively compensate only some constituents of Respondent No.8 for their losses, by adopting a completely discriminatory, arbitrary and capricious criteria. The learned Counsel for the Petitioner has further submitted that the entire procedure and manner in which the Respondent No.1 has gone about processing claims made by the Petitioner is not only completely arbitrary and contrary to its own Byelaws and the 1996

Guidelines which were applicable at the relevant time, but is also perverse and unsustainable and deserves to be quashed and/or set aside. In the circumstances, the learned Counsel for the Petitioner has vehemently contended that the 2002 Guidelines are illegal and ultra vires both the Byelaws of Respondent No.1 as well as the 1996 Guidelines which still continue to exist, and hence the said 2002 Guidelines deserve to be quashed and set aside.

48. It is the contention of the learned Counsel for the Petitioner that the 2002 Guidelines cannot and do not operate retrospectively and therefore cannot be made applicable to the claim made by the Petitioner. According to him, the criteria and the basis on which the Respondent No.1 has decided to compensate only some of the constituents of Respondent No.8 on a selective basis, is completely discriminatory, arbitrary, capricious and de hors the Rules and Byelaws of the Exchange.

49. Relying upon the relevant provisions of Chapter 13 of the Byelaws which pertain to the Investor Protection Fund, the learned Counsel for the Petitioner has contended that it can be seen that a claimant who has suffered a loss arising on account of a trading member being declared a defaulter, is entitled to be compensated for the actual loss suffered by her less the

amount or the value of all monies or other benefits received or receivable by her from any source in reduction of the loss. According to him, the conditions stipulated by Respondent No.1 do not find any basis under the Byelaws and are both ad hoc and arbitrary and created by the Exchange solely with the view of avoiding its liabilities to compensate the investors, such as the Petitioner.

50. The learned Counsel for the Petitioner has further contended that the Respondent No.1 - National Stock Exchange is not entitled to disallow the claims made by the Petitioner on the basis of any extra statutory conditions imposed by them which are beyond their Byelaws and which are infact patently extraneous to the conditions mentioned in the Bye laws. According to him the entire procedure and method adopted by Respondent No.1 in processing the claims is not only arbitrary but has been extremely secretive and has lacked transparency. The learned Counsel has vehemently argued that the Respondent No.1 by refusing to compensate the Petitioner for the losses incurred on account of default of Respondent No.8, has failed to perform the statutory duty to protect the small investors. According to him, the effect of impugned actions of Respondent No.1 to 7 has resulted in a violation of the Petitioner’s rights as guaranteed under Articles 14 and 300A of the Constitution of India.

51. In the circumstances, the learned Cousnel for the Petitioner has prayed that the Guidelines issued by Respondent No.1 and Respondent Nos.2 to 6 on 2nd April, 2002 be declared to be illegal and ultravires the Byelaws of Respodnent No.1 as well as the 1996 Guidelines. It is also prayed in the alternative that the Guidelines issued by Respondent No.1 and Respondent Nos.2 to 6 on 2nd April, 2002 be declared to be operative prospectively and not retrospectively, and that it be declared that the Petitioner's claim made to the Investors Protection Fund is governed by the Byelaws of Respondent No.1 read with 1996 Guidelines. It is also prayed by the Petitioner that the said Guidelines issued by Respondent No.1 and Respondent Nos.2 to 6 on 2nd April, 2002 be quashed and set aside, and that the decisions communicated to the Petitioner vide letters dated 26th April, 2002, 19th June, 2002 and 16th January, 2003 be also quashed and set aside. The Petitioner has also prayed that the Respondent No.1 be directed to act in strict compliance with the provisions of Chapter XIII of its Byelaws made under Section 9 of the Securities Contacts (Regulation) Act, 1956 as also the 1996 Guidelines and that the Respondent No.1 be further directed to fully compensate the Petitioner from its Investors Protection Fund for the losses suffered by the Petitioner on account of the default of the Respondent No.8. The Petitioner has further prayed that

the Respondent No.2 be directed to ensure that Respondent No.1 complies with its Bye laws and compensates the Petitioner fully for the losses suffered by him on account of the default of Respondent No.8.

52. Mr.Makhija, the learned Counsel for the Petitioner in **Writ Petition No.2056 of 2004** has submitted that the Petitioner is entitled to a sum of Rs.10,47,442.62 as a compensation for the loss suffered in view of the default of M/s.Bhavesh Dhirajlal Stock Broking Company Limited. In this regard he has referred to the Advocate's notice dated 5.4.2004 whereby the National Stock Exchange of India and the National Securities and Clearing Corporation Limited were called upon to pay the aforesaid sum. According to Mr.Makhija, the Petitioner in the present Petition has also prayed for almost similar reliefs as prayed for in Writ Petition No.2055 of 2004 viz.for a declaration that the decision taken by Respondent No.4 on behalf of Respondent Nos.1 & 2 as communicated by letter dated 19.9.2002 be declared to be arbitrary, bad in law, illegal and void, and for a direction that the Respondent Nos.1 & 2 be directed to fully compensate the Petitioner in accordance with the provisions of Securities Lending Scheme/ ALBM Scheme for the loss suffered by the Petitioner on account of default of Respondent No.6. In the alternative, the learned Counsel for the Petitioner has also prayed for directions to Respondent Nos.1 and 2 to fully compensate

the Petitioner from their Investors Protection Fund for the loss suffered by the Petitioner on account of default of Respondent No.6. Similarly, the Petitioner has also prayed that the Respondent No.5 be directed to ensure that the Respondent Nos.1 & 2 complies with its Byelaws and compensates the Petitioner fully for the loss on account of default of Respondent No.6. The Petitioner has also prayed for a direction to Respondent No.5 to conduct an enquiry in accordance with Section 11 of the SEBI Act into the affairs of Respondent Nos.1 & 2 regarding settlement/disbursement of the claims arising out of the Securities Lending Scheme / ALBM Scheme and submit its report to this Court.

53. So far as Writ Petition No.2735 of 2004 is concerned, the learned Senior Counsel Mr.Seervai appearing for the Petitioner has submitted that the learned Arbitrator appointed by the Stock Exchange itself had passed an Award on 31st July, 2002 in favour the Petitioner holding thereby that an amount of Rs.2,78,217.71 was due and payable by Respondent No.8 to the Petitioner with interest at the rate of 15% per annum from 13th July, 2001 till payment. Referring to the Advocate’s letter dated 21st Octoaber, 2002 written to the National Stock Exchange, the learned Counsel for the Petitioner has further submitted that on or about September/October, 2002 the Petitioner has received a sum of Rs.9,820.35 and Rs.11,406.12 respectively from

the funds of the said broker leaving thereby a balance amount due and payable to the Petitioner in the sum of Rs.2,72,397.36. Ultimately, the learned Counsel for the Petitioners has prayed for a declaration that the Guidelines issued by Respondent No.1 and Respondent Nos.2 to 6 on 2nd April, 2002 be declared to be illegal and ultravires the Bye-laws of Respondent No.1 as well as the 1996 Guidelines and prayed for quashing & setting aside the same. The learned Counsel for the Petitioner has also prayed for a declaration that the Guidelines issued by Respondent No.1 and Respondent Nos.2 to 6 on 2nd April, 2002 be declared to operate prospectively and that the Petitioner's claim made to the Investors Protection Fund be declared to be governed by the Bye-laws of Respondent No.1 read with 1996 Guidelines. It is also prayed that the decisions communicated to the Petitioner vide letters dated 26th April, 2002, 19th June, 2002 and 16th January, 2003 be quashed and set aside. The learned Counsel for the Petitioner has further prayed that the Respondent No.1 and Respondent Nos.2 to 6 be directed to forthwith withdraw and cancel the Guidelines dated 2nd April, 2002 and restrain the said Respondents from implementing the said Guidelines and/or from acting pursuant thereto whilst deciding the Petitioner's claim for being compensated under the Investors Protection Fund. It is also prayed that the Respondent No.1 be directed to act in strict compliance with and to scruplously follow the provisions of Chapter

XIII of its Bye-laws made under Section 9 of the Securities Contacts (Regulation) Act, 1956 as also the 1996 Guidelines and to fully compensate the Petitioner from its Investors Protection Fund for the losses suffered by him on account of the default of the Respondent No.8.

54. Referring to the Advocate's notices in the respective writ petitions, Mr.Narulla, the learned Counsel for the Petitioners has submitted that, so far as **Writ Petition No.1959 of 2004** is concerned the Petitioner is entitled to a net claim in the sum of Rs.11,30,110.70 as a compensation for the loss suffered on default of M/s.Bhavesh Dhirajlal Stock Broking Company Limited, so far as **Writ Petition No.1961 of 2004** is concernd, the Petitioner is entitled to a net claim in the sum of Rs.7,14,210.82 as compensation for the loss suffered on default of M/s.Bhavesh Dhirajlal Stock Broking Company Limited, so far as **Writ Petition No.2022 of 2004** is concerned the Petitioner is entitled to a net claim in the sum of Rs.20,32,348.48 as a compensation for the loss suffered on default of M/s.Bhavesh Dhirajlal Stock Broking Company Limited, so far as **Writ Petition No.2047 of 2004** is concerned the Petitioner is entitled to a net claim in the sum of Rs.7,76,004.93 as compensation for the loss suffered on default of M/s.Bhavesh Dhirajlal Stock Broking Company Limited, and so far as **Writ Petition No.2048 of 2004** is concerned the

Petitioner is entitled to a net claim in the sum of Rs.14,36,211.20 as compensation for the loss suffered on default of M/s.Bhavesh Dhirajlal Stock Broking Company. Mr.Narulla has therefore submitted that in all the aforesaid Petitions the Petitioners have prayed for almost similar prayers viz. for a declarations that the Guidelines issued by Respondent No.1 on 2nd April, 2002 be declared to be illegal and ultravires the Bye-laws of Respondent No.1 as well as the 1996 Guidelines and cannot be made applicable to the cases of the Petitioners, and for quashing & setting aside the same, and for a directions to Respondent Nos.1 & 3 to act in strict compliance with and to and to scruplously follow the provisions of Chapter XIII of its Bye-laws made under Section 9 of the Securities Contracts (Regulation) Act, 1956 as also the 1996 Guidelines while considering the Petitioners claims on the aforesaid basis.

CONSIDERATION

55. **As** far as the preliminary issue as to whether a Writ Petition could be filed against National Stock Exchange is concerned, this Court in a judgment in the case of **Mrs.Sejal Rikesh Dalal & Ors.V/s.Stock Exchange, Mumbai - AIR 1991 Bom.30** has clearly held that such a Writ Petition would lie against Bombay Stock Exchange. Similarly the above view has been followed in a Division

Bench judgment of our Court in the case of **Trilochana K.Doshi V/s.Stock Exchange of India & Anr. - (2001) All M.R.544.** Over and above, in view of the recent judgment of the Hon'ble Supreme Court in the case of **Zee Telefilms Ltd. and Another V/s.Union of India & Another - (2005) 4 SCC 649**, the above issue is no longer res integra. Hence we hold that such a Writ Petition is clearly maintainable against the National Stock Exchange.

56. The main grievance of all the above Petitioners is that the Petitioners claim from Investor Protection Fund ought to be decided by the 1996 Guidelines and not by 2002 Guidelines. All the Counsel for the Petitioners in the above Petitions had pointed out that the claims were made to the National Stock Exchange in April 2001, when the 1996 Guidelines were in force. It was also pointed out that the Chartered Acountants appointed by the National Stock Exchange had examined the various records between June 2001 to February 2002 and had submitted their reports in February 2002, when the 1996 Guidelines were in force.

57. It is also vital to note that 2002 Guidelines nowhere indicates that it has any retrospective effect, even impliedly. Even Mr.Bharucha, the learned Senior Counsel did not contend that the said 2002 Guidelines had any retrospective effect. In fact Mr.Bharucha had

relied on 1996 Guidelines, especially Clauses II 2(i) and (ii), to contend that as the transactions were not processed through NEAT system, hence the claims of Petitioners were disallowed.

58. To understand the controversy, the following legal provisions will have to be seen:-

. Section 9 of the Securities Contracts (Regulation) Act, 1956 provides that any Stock Exchange may, subject to the previous approval of the Securities and Exchange Board of India, make Bye-laws for the regulation and control of the contracts. Rule 18 of the Securities Contracts (Regulation) Rules, 1957, provides the manner of publication of bye-laws for criticism, which reads as under:-

> **Rule 18: Manner of publication of bye-laws for criticism:-** The bye-laws to be made, amended or revised under the Act shall be published for criticism in accordance with the provisions of Section 23 of the General Clauses Act, 1897 both in the Gazette of India and Official Gazette of the State in which the principal office of the recognised stock exchange is situate.

59. It appears that pursuant to the said powers the National Stock Exchange has framed the Bye-laws in June,

2000 wherein Chapter XIII deals with the Protection Fund and the relevant Rules 1, 2 and 3 of the said Chapter read as under:-

(1) In respect of such market segment of the Exchange as may be prescribed by the relevant authority, an Investor Protection Fund shall be maintained, to which each trading member shall contribute the amounts required by this Part, to make good claims for compensation which may be submitted by any person including a trading member or constituent who suffers loss arising from any trading member being declared as a defaulter by the Exchange under Chapter XII.

(2) Subject to this part, the amount which may claimant shall be entitled to claim as compensation shall be the amount of the actual loss suffered by him (including the reasonable costs of and disbursements incidental to the making and proof of his claim) less the amount or value of all monies or other benefits received or receivable by him from any source in reduction of the loss.

(3) The amount that may be paid under this Part to each person who suffers loss on account of a trading member being declared as a defaulter shall not exceed such amount as may be decided by the relevant authority from time to time.

60. On 27th February, 1996 certain Guidelines were issued under the Bye-laws of the National Stock Exchange wherein Guideline **II(1) deals with Nature of Claims Allowed** and Guideline **II(2) deals with Nature of Claims Disallowed.** Guideline II (1) (iii) with regard to the **Nature of Claims allowed**, reads as under:-

> **II. 1. Nature of Claims Allowed:-**
> (i).....
> (ii).....
>
> (iii) Claims arising out of money in hands of the Trading Member pending investment or money in the hands of the Trading Member which has been improperly dealt with.

. Guideline II (2) with regard to Nature of Claims to be Disallowed, reads as under:-

> (2) Certain Claims to be Disallowed:-
>
> (i) The fund shall not be available for claims in respect of repayment of deposits or loans placed with or given to the defaulter Trading Member by any person for any other transaction not connected with purchase and sale of securities on National Stock Exchange.

(ii) The Trustees shall not make payment towards losses arising to the constituent due to speculative transaction. The decision of the Trustees as to which are speculative transactions shall be final and binding.

61. On 2nd April, 2002 the aforesaid Guidelines were again revised, and the relevant portion of 2002 Guidelines reads as under:-

To review and decide basis for admitting claims and basis for allocation of assets in respect of defaulters/expelled members vesting in Defaulters' Committee and also basis for payment out of Investors' Protection Fund.

The Trustees, after taking into consideration the relevant provisions in the bye-laws, rules and regulations and the deed constituting Investor Protection Fund (IPF), deliberated on the conditions for admitting claims for payment from the assets vesting in the Defaulters' Committee as well as IPF, and laid down the following guidelines in that behalf.

1) All genuine and bonafide claims, for which

an order/trade is recorded on the NEAT system, will be eligible for consideration irrespective of whether the Claimant produces a copy of contract note as proof or otherwise.

2) No claim shall be entertained unless such a claim is supported with necessary and sufficient proof of payment/delivery of securities to the member who is declared a defaulter/expelled, either directly or through a registered sub-broker.

3) All claims, which meet the requirements of (1) and (2) above, will be eligible for consideration by the Exchange.

4) Any claim which does not meet both the requirements of (1) and (2) above shall be placed before the Defaulters' Committee for scrutiny and the Committee may consider each case on its merit, and a decision on any case, on the basis of the merits of each case shall not constitute/ be quoted as, a precedent in another case.

5) While considering a claim referred under condition (4) above, the Defaulters Committee may direct payment of such claims, which, in

the opinion of the Defaulters' Committee are made by a genuine and bonafide investor and the claim has direct relevance to such transactions through the NEAT system of the Exchange.

6) A claim will be eligible for payment to the extent of the actual loss suffered by an investor and the actual loss would include any difference receivable by the Claimant arising out of the transactions. No claim shall include any claim for damages or interest or notional loss.

62. A perusal of the above provisions, clearly show that as per the Bye-laws framed in the year 2000, which were duly gazetted, provides in Chapter XIII, Investor Protection Fund. The entire Protection Fund has been created by the funds contributed by the trading members of the Stock Exchange. The very purpose of creating such a fund is to instil confidence amongst the members of investing public, so that they will be compensated in case of defaulting trading member. In the said Chapter XIII, Rule 1 makes it abundantly clear that the said Protection fund has been created to make good the claims for compensation which may be submitted by any person, including a trading member or constituent who suffers loss arising from any trading member being declared a

defaulter by the Exchange under Chapter XII (Emphasis supplied).

63. The Rule 2 under that Chapter XIII provides that the compensation shall be the actual loss suffered. The Rule 3 under that chapter provides that there will be a ceiling with regard to such a compensation. Earlier it seems that the ceiling was Rs.5 lakhs and the said ceiling was raised to Rs.10 lakhs. That is to say the compensation payable out of the said Investor Protection Fund shall not exceed such a prescribed ceiling.

64. In the year 1996, certain guidelines were framed, wherein II 1.(iii), very specifically reiterates what was provided in the said Bye-laws, as under:-

> (iii) Claims arising out of money in the hands of the Trading Member pending investment or money in the hands of the Trading Member which has been improperly dealt with.

65. From the above provisions, the pre-requisite to make such a claim of compensation would be that the Trading Member ought to be declared a defaulter as per Chapter XII of the Bye-laws. In all the above Petitions, there is no dispute that the concerned Trading Member was duly declared a defaulter by the

National Stock Exchange as per Chapter XII of the Bye laws.

66. Mr.Bharucha, the learned Senior Counsel of the National Stock Exchange had fairly stated that the investigations of National Stock Exchange had revealed that none of the claims of the Petitioners for compensation were collusive with the defaulting Trading Member or fraudulent. Mr.Bharucha also does not dispute that the claims of the Petitioners were genuine, however as the transactions are not reflected in the NEAT system of the National Stock Exchange, the Petitioenrs are not entitled to such compensation out of the Investor Protection Fund.

67. All the Petitioners had invested their funds with the Trading Member when the 1996 Guidelines were in force. The Trading Member was declared a defulater when 1996 Guidelines were in force. Even when the claims of the Petitioners were made, 1996 Guidelines were in force. Therefore, it is very clear that 1996 Guidelines would cover the cases of the Petitioners.

68. Even Mr.Bharucha did not rightly contend that the 2002 Guidelines have a retrospective effect. There is nothing expressly or impliedly in the said 2002 Guidelines to hold that they have a retrospective effect. We are clearly of the view that the said 2002

Guidelines can only be prospectively applied and that they have no retrospective effect.

69. Hence we have to decide whether the claims of the Petitioners can be sustained under the 2000 Byelaws and 1996 Guidelines. The aforesaid 2000 Byelaws in Chapter XII, provides for declaring the Trading Member as a defaulter which is a pre-requisite condition for considering the claim of compensation. In all the above Petitions, there is no dispute that Trading Member has been declared a defaulter. Therefore, the aforesaid pre-requisite condition has been satisfied.

70. If we carefully scrutinize the 1996 Guidelines, in II.1.(iii) it is expressly provided that claim will be allowed if it arises out of the money in the hands of Trading Member pending investment or money in the hands of the Trading Member which has been improperly dealt with. In the cases of claims of the Petitioners in the above Petitions, they all fall under the second limb of the above rule, i.e.money in the hands of Trading Member which has been improperly dealt with. The investigations of the National Stock Exchange clearly indicate that the Trading Member had used the moneys of the Petitioners to pay off other debts. Therefore the claims of the Petitioners would squarely fall under the second limb of the above rule.

71. Neither 1996 Guidelines nor 2000 Bye-laws provide that the investment ought to be reflected in the NEAT System of the National Stock Exchange. On the contrary the 1996 Guidelines make it clear that even **the moneys in the hands of a Trading Member, pending investment if he is declared defaulter, the claim will be allowed.** (Emphasis supplied).

72. Similarly, the above 1996 Guidelines also **allows claims of compensation if the moneys in the hands of Trading Member which has been improperly dealt with, as in the case of Petitioners.** Therefore, we are clearly of the view that neither the 1996 Guidelines nor 2000 Bye-laws contemplate investment through NEAT system of National Stock Exchange.

73. As we had indicated earlier, the Petitioners claims are clearly covered under 1996 Guidelines and 2000 Bye-laws and not by 2002 Guidelines. We have also held that 2002 Guidelines do not have any retrospective effect.

74. The other limb of the argument of Mr.Bharucha the learned Senior Counsel that the Petitioners claims for compensation cannot be sustained in view of 1996 Guidelines II(2)(i)(ii) which prohibits claims with regard to repayment of loan or deposit given to Trading Member, not connected with purchase and sale of

securities at the National Stock Exchange. In the cases of Petitioners claim of compensation do not pertain to any repayment of loan or deposit given to the Trading Member, unconnected with the sale or purchase of securities, hence the said argument cannot be sustained.

75. Similarly, the Petitioners seeking to invest in ALBM of National Stock Exchange cannot be construed as speculative transactions, so as to prohibit claims of compensation. There is also no dispute that the National Stock Exchange has been regularly compensating claims arising out of investment in ALBM of the National Stock Exchange. Therefore we are clearly of the view that the claims of Petitioners for compensation cannot be denied on the ground that such proposed investment in the ALBM of National Stock Exchange would amount to speculation as contemplated under 1996 II (2)(ii) Guidelines.

76. The final objection of Mr.Bharucha is that all the Petitions are solely for monetary claims, hence not maintainable. On the contrary all the Petitioners in the above Petitions in substance are seeking enforcement of 1996 Guidelines and 2000 Bye-laws and by way consequential relief are seeking monetary claims, hence the Petitions are maintainable. Even the objection of Mr.Jha that claims are contractual in nature cannot be accepted. The claims are clearly enforceable through

1996 Guidelines and 2000 Bye-laws. Another vital aspect to be noted is that in most of the Petitions, Arbitral Tribunals constituted by the National Stock Exchange had awarded various amounts to the petitioners which some of them could partially recover.

77. Under the aforesaid facts and circumstances, we hold that the Petitioners are entitled to enforce 1996 Guidelines and 2000 Bye-laws against the National Stock Exchange and as a consequence are entitled to claim compensation for loss actually sustained. The letters whereby the Petitioners claim for compensation were rejected, stand quashed and set aside.

78. Hence, we direct the National Stock Exchange to compensate the loss of the Petitioners in each of the Petitions after deducting the amounts already received, but upto the limit prescribed for such compensation. Rule is accordingly made absolute, with costs.

79. On the application of Mr.Bharucha, the learned

Senior Counsel, this judgment and order shall stand stayed for a period of six weeks from the date of giving reasons, i.e.from 13th April, 2006.

(DR.S.RADHAKRISHNAN,J.)

(SMT.V.K.TAHILRAMANI,J.)